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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,) VOLUME 6
)
) CRIMINAL ACTION
v.) NO. 23cr61(MN)
)
ROBERT HUNTER BIDEN,)
)
Defendant.)

Monday, June 10, 2024
8:15 a.m.
Jury Trial

Courtroom 4A
844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

SPECIAL COUNSEL'S OFFICE
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2507:49:29 14
08:17:05 15 THE COURT: All right. Good morning, everyone.08:17:07 16 Please be seated. Okay. So I have the written objections
08:17:20 17 and a proposed addition to the jury instructions. I thought
08:17:28 18 we could go -- let's go through them so that I can figure
08:17:32 19 out what -- I know the government has proposed a few
08:17:36 20 changes, I want to find out if the defendant has any
08:17:38 21 objections.08:17:39 22 So let me start with defendants proposed
08:17:43 23 additions and changes. The theory of the defense
08:17:50 24 instruction I will not add, that is argument and I don't
08:17:52 25 think it's appropriate in instructions that I give to the

08:17:58 1 jury. With respect to reasonable doubt, we have had this
08:18:03 2 before in connection with the preliminary instructions, and
08:18:08 3 I am going to go with the current version of reasonable
08:18:12 4 doubt that we have, which is consistent with the Third
08:18:19 5 Circuit's proposed -- Third Circuit's model instruction.

08:18:30 6 With respect to impeachment of defendant prior
08:18:36 7 inconsistent statement, I agree with you, that was just
08:18:40 8 weird, but it was in there so I italicized it. Can we take
08:18:44 9 that out?

08:18:44 10 MR. LOWELL: Yes.

08:18:45 11 THE COURT: So we're going to remove that one.
08:18:50 12 Materially defined, flat out wrong according to the
08:18:54 13 defendant, but it is essentially the Third Circuit model
08:19:00 14 instructions, so what is flat out wrong?

08:19:07 15 MR. LOWELL: In the material that we provided,
08:19:11 16 from the --

08:19:12 17 THE COURT: There is no case cited in what you
08:19:15 18 provided to me, so if you're telling me it's contrary to
08:19:18 19 law, it would be nice to have a case.

08:19:20 20 MR. LOWELL: I'm sorry, it's contrary to --
08:19:23 21 that's -- that reflects back to our 29 motion on the Second
08:19:28 22 Amendment that BROADENS the definitions we believe that the
08:19:31 23 law that makes that improper is that motion for the 29
08:19:36 24 Second Amendment, it makes it a much broader category, which
08:19:41 25 reflects back to that motion itself, that's what we're

08:19:44 1 referring to.

08:19:44 2 THE COURT: Okay. So your objection is noted

08:19:46 3 and overruled.

08:19:48 4 Unlawful user of a controlled substance, the

08:19:52 5 definition proposed, we've had this one before and your

08:20:00 6 objections are preserved, but I am going to overrule that

08:20:06 7 one.

08:20:09 8 I think that the Third Circuit did cite to

08:20:21 9 eighth circuit precedent with respect to that and the eighth

08:20:28 10 circuit has -- and the eighth circuit has said that you

08:20:35 11 address the constitutional vagueness issue with respect to

08:20:38 12 the timing by saying it needs to be contemporaneous around

08:20:42 13 that time, so I am going to overrule that objection.

08:20:45 14 Knowing possession. I am going to overrule.

08:20:54 15 Again, I think this is the model instruction, while I'm not

08:21:02 16 bound to it, at least currently it appears to be an accurate

08:21:10 17 state of the law in this circuit.

08:21:19 18 And other objections. Oh, not including the

08:21:25 19 knowledge of a user or good faith, I think that those are

08:21:29 20 included in the Third Circuit as said I don't need to

08:21:33 21 include, for example, good faith when it would be redundant

08:21:37 22 of other instructions, which I think it is here.

08:21:40 23 All right. So those are the defendant's

08:21:43 24 proposed changes and objections. The stipulations and fact,

08:21:52 25 government proposes some additional stipulations or to

08:21:57 1 change, the language is changed of the stipulations.

08:22:01 2 Mr. Lowell, your position.

08:22:01 3 MR. LOWELL: I only got these right before I

08:22:03 4 came back.

08:22:04 5 THE COURT: Can you guys just take a look?

08:22:06 6 MR. LOWELL: That was on page 1 and if the

08:22:08 7 government would explain to me what difference it was, that

08:22:11 8 would probably expedite.

08:22:13 9 MR. HINES: In our proposed jury instructions,

08:22:15 10 which the court utilized in the proposed final instructions

08:22:19 11 which included a draft version of the instructions, this

08:22:23 12 represents the entered into evidence stipulation which was

08:22:25 13 entered into trial, which the language was slightly tweaked

08:22:28 14 from what we had initially proposed to the court.

08:22:31 15 MR. LOWELL: That one I have no objection.

08:22:33 16 THE COURT: Okay. So we will include

08:22:35 17 government's proposed instruction on stipulations and

08:22:38 18 replace the stipulations in the draft.

08:22:44 19 Credibility of witness, immunized witnesses. I

08:22:49 20 know that there was testimony that Ms. Kestan was immunized,

08:22:53 21 and I remember you saying that in opening, I don't remember

08:22:56 22 that that's in evidence.

08:22:57 23 MR. LOWELL: I asked her, judge.

08:22:59 24 THE COURT: You did.

08:22:59 25 MR. LOWELL: Yes.

08:23:00 1 THE COURT: All right. So with that,

08:23:02 2 Mr. Lowell, do you have any thoughts, objections?

08:23:09 3 MR. LOWELL: I think the difference is just in

08:23:11 4 that first sentence, putting in the names of the people.

08:23:14 5 THE COURT: Yes. So that's what he did. But

08:23:18 6 there were like multiple paragraphs -- oh, I see, so we take

08:23:24 7 out -- all we're going to do is just put in the first

08:23:30 8 sentence, add the two names. So we're using the not against

08:23:39 9 her in a criminal case as opposed to not prosecuted.

08:23:44 10 MR. HINES: Correct. That was the, in terms of

08:23:46 11 the immunity for both, Ms. Biden and Ms. Kestan.

08:23:50 12 THE COURT: So Mr. Lowell, any objection to

08:23:53 13 using the language proposed by the government?

08:23:56 14 MR. LOWELL: The difference is in the draft that

08:23:58 15 has received a promise from the government that her

08:24:00 16 testimony will not be used, and here it says the promise

08:24:04 17 from the government is her testimony will not be used. I

08:24:07 18 think the only difference is that we've added the two names,

08:24:10 19 otherwise --

08:24:11 20 THE COURT: And I'm asking you if you're okay

08:24:14 21 with it.

08:24:14 22 MR. LOWELL: Of course. Those are the two, I'm

08:24:16 23 sorry, I thought there was a change.

08:24:18 24 THE COURT: No, no, it's fine.

08:24:19 25 Credibility of witnesses, testimony of addict or

08:24:23 1 substance abuser, the government said nobody who testified
08:24:29 2 was addicted to drugs or using drugs when the events took
08:24:33 3 place, and so the government proposes to omit that.

08:24:39 4 MR. LOWELL: And I agree with the government,
08:24:41 5 except probably with one fewer person, because that includes
08:24:45 6 Mr. Biden in that, having said that I don't think there is
08:24:48 7 any testimony that any of the witnesses were so, so that
08:24:51 8 should be struck.

08:24:53 9 THE COURT: Okay. So we will strike number
08:24:55 10 eight.

08:24:55 11 Then we have defendant's choice not to testify
08:25:02 12 or present evidence.

08:25:05 13 MR. LOWELL: So that one just needs to say
08:25:08 14 testify.

08:25:08 15 THE COURT: Okay. And you're fine with the rest
08:25:10 16 of it?

08:25:12 17 MR. LOWELL: Let me see for a moment. Yes.

08:25:20 18 THE COURT: Okay. So we will take out did not
08:25:24 19 present evidence in both of those places, leave in did not
08:25:29 20 testify, remove the brackets, and remove the italics. I
08:25:37 21 think that should do it. Okay.

08:25:39 22 So then we remove ten, defendant's testimony.
08:25:49 23 We remove 11, impeachment of defendant. And the next
08:26:04 24 objection or addition that the government has is that the
08:26:10 25 parties have stipulated and agreed that StarQuest Shooters

08:26:15 1 and Survival Supply was a licensed dealer, you should
08:26:20 2 therefore treat this, this is to page 3 of the government's
08:26:23 3 submission -- you should therefore treat this fact as having
08:26:27 4 been proved, you are not required to do so, however, because
08:26:30 5 you are the sole judge of the facts.

08:26:34 6 MR. LOWELL: Yes.

08:26:35 7 THE COURT: Are you fine with that?

08:26:38 8 MR. LOWELL: Yes, that's fine.

08:26:40 9 THE COURT: So we'll make that change.

08:26:47 10 MR. LOWELL: Sorry, I'm now confused, on their
08:26:53 11 page 4, versus --

08:26:56 12 THE COURT: I haven't gotten there yet, okay.

08:26:59 13 MR. LOWELL: No, no, I wasn't there, I was on
08:27:02 14 page 3.

08:27:02 15 THE COURT: Okay.

08:27:03 16 MR. LOWELL: We were just talking about which
08:27:10 17 Roman numeral were you just referring to, please?

08:27:14 18 THE COURT: 14.

08:27:15 19 MR. LOWELL: Sorry. One moment, please.

08:27:29 20 Yes, that's okay.

08:27:30 21 THE COURT: Thank you.

08:27:32 22 MR. HINES: Your Honor, with respect to 14, just
08:27:35 23 to shortcut something -- I'm sorry, 13.

08:27:41 24 MR. LOWELL: 13?

08:27:43 25 MR. HINES: Sorry, my apologies, it's 18, I'll

08:27:46 1 wait a second, Your Honor.

08:27:48 2 THE COURT: Okay. The Roman numerals are

08:27:52 3 killing us all.

08:27:54 4 Okay. 18, the government's proposed

08:27:59 5 instruction, can you tell me what you did?

08:28:02 6 MR. HINES: So what we intended to do was just

08:28:06 7 really add the last sentence, which is that stipulation

08:28:09 8 language that we had referenced that the jury can treat this

08:28:13 9 fact as having been proved, they're not required to do so.

08:28:16 10 So the Court could ignore what we put up until that last

08:28:20 11 sentence, which appears to be put in there in error.

08:28:23 12 MR. LOWELL: When you say that last sentence,

08:28:25 13 that last sentence on your submission?

08:28:28 14 MR. HINES: On our submission, number 18, which

08:28:32 15 is page 3 into 4, where it's just asking that the Court

08:28:35 16 include the last two sentences, you should therefore treat

08:28:38 17 this fact as having been proved, you're not required to do

08:28:41 18 so however, since you are the sole judges of the facts.

08:28:48 19 THE COURT: All right. It's the same language

08:28:50 20 that we used with respect to the other stipulation.

08:28:53 21 MR. LOWELL: Yes, ma'am, I'm just asking, is

08:28:56 22 that on your proposed instructions where it was highlighted

08:28:59 23 instruction number 13, these say it has the same definition

08:29:06 24 as provided in that definition and then state what you said

08:29:09 25 before or do you repeat 13, I'm just not sure what that

08:29:14 1 means, you had highlighted that.

08:29:16 2 THE COURT: That's because I want to be sure if
08:29:19 3 the numbering changed we be sure to change the numbering.
08:29:23 4 All I'm going to say is that's the same definition provided
08:29:26 5 in whatever the instruction did it, so I don't have to sit
08:29:30 6 here and use extra words.

08:29:32 7 MR. LOWELL: I agree with that.

08:29:33 8 THE COURT: Okay, so we'll just make sure that
08:29:34 9 number is correct, that's why it's highlighted. But the
08:29:37 10 addition that's being proposed by the government is that we
08:29:40 11 add, if you look at theirs, page 4.

08:29:43 12 MR. LOWELL: Right.

08:29:43 13 THE COURT: The last two sentences, which are
08:29:44 14 the same two sentences we used with the prior stipulation.

08:29:48 15 MR. LOWELL: Correct.

08:29:48 16 THE COURT: You're fine with those.

08:29:51 17 MR. LOWELL: I am.

08:29:52 18 THE COURT: Thank you. 23. Interstate
08:29:58 19 commerce.

08:30:04 20 MR. HINES: This is again just the same --

08:30:07 21 THE COURT: Add those two sentences.

08:30:08 22 MR. HINES: Yes.

08:30:09 23 MR. LOWELL: Again, the same, that's fine.

08:30:11 24 THE COURT: Okay. Thank you.

08:30:15 25 And then with respect to the 25, which the

08:30:24 1 government called 14, but I know you meant 25, so what I
08:30:31 2 didn't understand was, I mean, I always give people
08:30:35 3 exhibits, I mean, not a gun, but I always give them the
08:30:39 4 exhibits. What is this, you can ask me for an exhibit?

08:30:44 5 MR. HINES: So our understanding is the practice
08:30:46 6 is not to allow things like firearms, ammunition, drug
08:30:50 7 evidence to go back with the jury. That is essentially
08:30:53 8 almost all of the physical exhibits. Certainly documents,
08:30:56 9 evidence that's been introduced in paper format can go back,
08:31:00 10 but there are limited physical evidentiary items, that's off
08:31:03 11 the top of my head, it's the gun, the ammunition, the speed
08:31:08 12 loader, the brown leather pouch.

08:31:11 13 THE COURT: Right. But doesn't this seem like
08:31:13 14 we're saying that they're not getting any exhibits? If you
08:31:17 15 want to see any of the exhibits, you mean, we could say any
08:31:20 16 of the physical exhibits, but this is sort of weird, it
08:31:25 17 sounds like they're just going to go back there and look at
08:31:29 18 each other.

08:31:29 19 MR. HINES: I agree we can make that change.

08:31:32 20 MR. LOWELL: The language that you highlighted I
08:31:34 21 thought worked before it was attempted to be changed. If
08:31:37 22 you want to see any of the exhibits that were admitted in
08:31:42 23 evidence, and if I can I will have those exhibits provided,
08:31:45 24 that's what you need to say and we understand that language
08:31:48 25 includes physical ones, but I don't think you need to say

08:31:51 1 more than what you had proposed.

08:31:52 2 THE COURT: Just so that we're clear, I'm not
08:31:55 3 proposing, this subject that the jury will have no exhibits,
08:31:58 4 that's not my practice. They would have exhibits, but not
08:32:01 5 the physical exhibits like the gun, and so I think what the
08:32:06 6 government is proposing is that if they're really desperate
08:32:11 7 to see the gun and checkout the serial number on it, they
08:32:16 8 could ask to come back to the courtroom to look at it. Is
08:32:19 9 that what you're saying?

08:32:20 10 MR. HINES: Exactly. One question I had --

08:32:23 11 THE COURT: I don't know that we actually need
08:32:24 12 to tell them that, because if we say provided, that's one
08:32:28 13 way we could provide it, right?

08:32:29 14 MR. HINES: That's fine. For my clarification
08:32:31 15 with respect to the audio that was played from the audio
08:32:34 16 book, they obviously have the physical book back there, but
08:32:37 17 to the extent the jury wants to hear the words again, is
08:32:40 18 there a mechanism for them to listen to it in the jury room
08:32:43 19 or do they need to come back out here in the courtroom?

08:32:47 20 THE COURT: They could listen to it in the jury
08:32:49 21 room.

08:32:49 22 MR. LOWELL: Could you please tell me what your
08:32:51 23 proposed 29 -- what that will now say?

08:32:54 24 THE COURT: If you want to see any of the
08:32:55 25 physical exhibits that were admitted in evidence, you may

08:32:58 1 send me a message and then if I can legally do so -- or if
08:33:02 2 you want to say if you want to see any exhibit you don't
08:33:05 3 have.

08:33:06 4 MR. LOWELL: So you're going to give them all
08:33:08 5 the exhibits except --

08:33:09 6 THE COURT: I'm going to give them all the
08:33:11 7 exhibits except for the ones I can't give them, like the
08:33:15 8 gun.

08:33:15 9 MR. LOWELL: Okay. I just was confused because
08:33:17 10 it did say any.

08:33:19 11 THE COURT: That's why it was highlighted
08:33:20 12 because that's the way you all proposed it to me, and I
08:33:23 13 didn't understand it, but I didn't want to delete it without
08:33:27 14 talking to you.

08:33:28 15 MR. LOWELL: Okay, if it's your practice to do
08:33:29 16 that, we'll follow your practice. Now I understand.

08:33:33 17 THE COURT: Okay. Thank you. So that one we'll
08:33:36 18 say -- what I am going to say is if you want to see any of
08:33:41 19 the exhibits that were admitted in evidence that you don't
08:33:44 20 have, you may send me a message and if I can legally do so,
08:33:48 21 I will have those exhibits provided.

08:33:54 22 Okay. Is there any objection, proposed addition
08:34:01 23 that I have not addressed?

08:34:02 24 MR. LOWELL: I'm sorry, you go first.

08:34:04 25 MR. HINES: No, Your Honor.

08:34:04 1 MR. LOWELL: There is a few, judge, that I would
08:34:06 2 like to bring to your attention if I might.

08:34:09 3 THE COURT: Sure.

08:34:09 4 MR. LOWELL: You skipped over 24, that was in
08:34:13 5 italics about activities not charged given all the evidence
08:34:17 6 about drug use in other years, we would suggest that that
08:34:21 7 was as proposed, we give it.

08:34:23 8 THE COURT: I wasn't sure what that was talking
08:34:25 9 about, yes, that's fine, we will un-italicize 24.

08:34:29 10 MR. LOWELL: 62. In addition to which,
08:34:32 11 generally for example on your proposed 27, page 27, that
08:34:35 12 would be in 25 so -- sorry, Roman numeral 25, there are
08:34:41 13 occasions where you do this, but on a couple of occasions
08:34:44 14 here, for example, whenever you use the phrase prove the
08:34:49 15 defendant, say beyond the reasonable doubt that is the
08:34:52 16 standard, here you say if the defendant has proved the
08:34:58 17 defendant guilty beyond a reasonable doubt.

08:35:00 18 MR. HINES: The previous section says that and
08:35:03 19 this is the Third Circuit model instructions, I don't think
08:35:06 20 we need to say over and over and over again, it becomes
08:35:09 21 cumbersome, but in the previous paragraph it says twice
08:35:13 22 beyond a reasonable doubt.

08:35:14 23 MR. LOWELL: Three words doesn't make it
08:35:17 24 cumbersome but it's a standard of proof, if you remove it
08:35:21 25 any time the word guilty is, it can then become confusing,

08:35:25 1 you because it was omitted --

08:35:29 2 THE COURT: I'm sorry, I don't mean to cut you off but I think you were talking to Mr. Hines and not me.

08:35:33 4 Is the only place I -- I see it in the second -- I'm sorry, 5 in the paragraph that begins third, if you decide that the 6 government has proved the defendant guilty beyond a 7 reasonable doubt. Is there any other place you want it?

08:35:49 8 MR. LOWELL: I think that's the one I found.

08:35:51 9 THE COURT: So we'll add that.

08:35:54 10 MR. LOWELL: The only other -- and then on the 11 next page, judge, where you're talking that you can go about 12 notes, that's slightly different than the preliminary and we 13 want you to add the sentence that you did in preliminary 14 here which is -- hold on a second. In the preliminary, you 15 said your notes are memory aids, they are not evidence. And 16 it says -- the phrase, in your deliberations do not give 17 anymore or less weight to the views of a fellow juror just 18 because a juror did or did not take notes, that was in the 19 preliminary, that sentence makes sense to clue in this one 20 as well.

08:36:40 21 MR. HINES: I don't have the preliminary in 08:36:42 22 front of me but if that tracks the preliminary, then that's 08:36:45 23 fine.

08:36:45 24 THE COURT: We'll cut and paste it from the 08:36:47 25 preliminary.

08:36:48 1 MR. HINES: Okay.

08:36:50 2 MR. LOWELL: Let me see if there is anything
08:36:52 3 else.

08:36:52 4 THE COURT: Thank you.

08:36:59 5 MR. LOWELL: I'm sorry, judge.

08:37:09 6 On your proposed 22, unanimity, Roman 22, in the
08:37:18 7 last paragraph, third line, it reads presently if you
08:37:23 8 unanimously agree that he was either an unlawful user of a
08:37:27 9 controlled substance or was addicted to a control substance
08:37:30 10 or both, you may find the defendant guilty. We ask that you
08:37:34 11 include and met the other elements as to each count, it
08:37:38 12 looks like that's the only element that's missing here. Do
08:37:44 13 you see where I'm referring?

08:37:46 14 THE COURT: Yes.

08:37:46 15 MR. LOWELL: So the phrase would be "and met the
08:37:49 16 other elements as to each count."

08:37:52 17 MR. HINES: No objection.

08:37:56 18 THE COURT: So in 22, at the end of the -- or in
08:38:01 19 the middle of the second sentence after "or was both," then
08:38:12 20 we put "and met the other elements of the offense, you may
08:38:16 21 find him guilty," right?

08:38:18 22 MR. LOWELL: I would ask to say as to each
08:38:21 23 count, as to each count.

08:38:22 24 THE COURT: I'm sorry, as to each count.

08:38:24 25 MR. HINES: I think it should say the offense,

08:38:26 1 because this instruction covers three different counts and
08:38:29 2 it could create confusion that somehow the elements from
08:38:32 3 each of the following counts link to the first count, for
08:38:38 4 example.

08:38:38 5 MR. LOWELL: The opposite I think judge, each
08:38:41 6 one of them does have a separate one, that's why you have to
08:38:44 7 say each, because each one is different and it's not saying
08:38:47 8 each. That can make them understand and meld, we ask them
08:38:51 9 to say and the other elements of each count.

08:39:37 10 THE COURT: Where I'm getting confused is it
08:39:40 11 almost sounds like you have to you find that he -- if they
08:39:49 12 met them for every count to find him guilty, so we need --

08:39:55 13 MR. LOWELL: I'm sorry, this is referring only
08:39:58 14 to one count, then it can say and met the other elements as
08:40:03 15 to this count. That's what the government is saying.

08:40:06 16 MR. HINES: I would suggest, Your Honor, that
08:40:07 17 the sentence could read something like if you unanimously
08:40:11 18 agree that he was either an unlawful user of a controlled
08:40:15 19 substance, or was addicted to a controlled substance, or was
08:40:19 20 both, and met the other elements of the offense, you may
08:40:22 21 find the defendant guilty of that offense.

08:40:32 22 MR. LOWELL: I prefer each count, but if Your
08:40:35 23 Honor thinks "of the offense" does it, then that's better
08:40:39 24 than what it does now for my purposes.

08:40:42 25 THE COURT: We'll make that change. Anything

08:40:44 1 else?

08:40:44 2 MR. LOWELL: We have not -- I don't know that

08:40:47 3 the Court has yet provided what will be a verdict form.

08:40:51 4 THE COURT: Oh, I did want to talk about the

08:40:53 5 verdict form. So the government, it seems like your issue

08:40:56 6 was knowing in the verdict form. So I guess my question

08:41:06 7 was, in the indictment, it says knowing. So why are we not

08:41:13 8 including that in the verdict form?

08:41:16 9 MR. HINES: So knowingly is obviously an element

08:41:18 10 and the Court is instructing on knowingly, there is a whole

08:41:22 11 host of other elements.

08:41:24 12 THE COURT: So what happened was I was trying to

08:41:26 13 put in everything from the indictment and then it became

08:41:29 14 bigger. So I took that point. But how do we -- what do we

08:41:40 15 call it in -- so you're saying essentially just use the

08:41:48 16 terminology that is in the jury instructions?

08:41:55 17 MR. HINES: Just use the terminology that's in

08:41:57 18 is the statute, the statute doesn't specifically read the

08:42:00 19 word knowingly, because that's ordinarily the practice that

08:42:03 20 I have experienced with respect to jury verdict forms, you

08:42:07 21 don't include the additional terminology as an element in

08:42:11 22 the verdict form itself because the Court is already

08:42:14 23 instructing on that element.

08:42:16 24 MR. LOWELL: Yes, but this is the last moment

08:42:18 25 when they have to make a decision, and as Your Honor knows,

08:42:22 1 knowingly is a very key aspect and it is to each of those
08:42:27 2 counts and adding a word to remind them as opposed to taking
08:42:31 3 it out if they may if they just looked at the verdict form
08:42:34 4 decide it is a different standard is prejudicial and it is
08:42:38 5 not redundant because it is part of each count as it was
08:42:41 6 when we proposed it.

08:42:44 7 THE COURT: Right. But then the question is why
08:42:47 8 aren't we including all of the other elements. And that's
08:42:50 9 what I was trying -- when I saw yours, I was trying to do
08:42:53 10 that and went back to the indictment, and I was like well,
08:43:00 11 the indictment says knowing, but it also says a lot of other
08:43:06 12 stuff.

08:43:06 13 MR. LOWELL: Well, the other stuff is hardly
08:43:08 14 contested, whether or not interstate commerce, whether it
08:43:12 15 was a dealer, so the only one in dispute for all intents and
08:43:17 16 purposes is this one critical phrase, so I don't think you
08:43:20 17 have to, especially given the stipulation, include every
08:43:23 18 other -- almost of every count when the only one between us
08:43:28 19 and the government being disputed is the one that it lacks.

08:43:32 20 MR. HINES: Your concern would be including the
08:43:35 21 one element as opposed to the other would lead to the
08:43:37 22 confusion in the jury when they wonder why there is an
08:43:43 23 inconsistency between the jury form and the instruction, we
08:43:45 24 think a general description that's standard that tracks the
08:43:49 25 language of the statute is sufficient, obviously we can

08:43:52 1 argue knowingly in closing arguments which I expect will be
08:43:56 2 the focus of both counsel's presentation.

08:44:00 3 MR. LOWELL: I don't want to -- if we're trying
08:44:08 4 to make sure the jury is not confused and you take out the
08:44:11 5 critical element, which is at the core of the defense,
08:44:14 6 you're actually providing more of an ability to make for at
08:44:17 7 least not confusion, but contradiction.

08:44:19 8 THE COURT: I will leave it with what the
08:44:21 9 government has, but I will when I talk to them about the
08:44:24 10 jury verdict form tell them that when they look at these,
08:44:28 11 they have to go back and look at the instructions that were
08:44:32 12 provided for each count. The other thing on the jury
08:44:36 13 verdict form, we usually have all the jurors sign. Any
08:44:40 14 objections to that?

08:44:41 15 MR. HINES: No, Your Honor.

08:44:42 16 MR. LOWELL: You said it's the foreperson. This
08:44:51 17 says presiding jurors. So what would that say?

08:44:55 18 THE COURT: It would say once you have a
08:44:58 19 verdict, everybody sign it, I mean, we have spaces for --

08:45:02 20 MR. LOWELL: That's what I meant.

08:45:03 21 THE COURT: We have foreperson plus 11 spaces.

08:45:06 22 MR. LOWELL: Got it. If that's the Court's
08:45:08 23 practice, again I'm not going to change something that you
08:45:11 24 always do, unless --

08:45:13 25 THE COURT: Unless you tell me it's flat out

08:45:16 1 wrong and then I may reconsider.

08:45:17 2 MR. LOWELL: But that's not flat out wrong.

08:45:20 3 THE COURT: Thank you.

08:45:21 4 Okay. All right. Anything else?

08:45:31 5 MR. HINES: Nothing on jury instructions.

08:45:33 6 MR. LOWELL: Nothing on jury instructions, but
08:45:35 7 we do have another issue.

08:45:38 8 (Side-bar discussion:)

08:53:21 9 MR. LOWELL: Last night at 9:30 or whatever
08:53:21 10 after the government said they would not have a rebuttal
08:53:21 11 case, they wrote while preparing for closing argument, and
08:53:21 12 reviewing transcript this evening, we realized that Naomi
08:53:21 13 Biden provided inaccurate testimony about the date when the
08:53:21 14 defendant traveled to New York. That's what they wrote,
08:53:21 15 that's the need for rebuttal. I understand, we can address
08:53:21 16 that.

08:53:21 17 What they have done after that late at night was
08:53:21 18 to provide us a new set of texts, forty-two of them, to
08:53:21 19 propose in between before he got to New York where he was,
08:53:21 20 who he was talking with, and what he was doing, which
08:53:21 21 includes references that could be to try to contact or have
08:53:21 22 people that were contacting him for possible drug use, that
08:53:21 23 was not put in their case-in-chief. If what they said, and
08:53:21 24 this is rebuttal, this is a rebuttal case as to where he was
08:53:21 25 or whether Naomi was wrong, then that's what the rebuttal

08:53:21 1 is. That doesn't need forty-two texts that includes all
08:53:21 2 kinds ever other language.

08:53:21 3 We would be prepared to stipulate that either he
08:53:21 4 you heard evidence from Naomi Biden that he arrived and was
08:53:21 5 there the 15th, that's not correct it was a few days later,
08:53:21 6 or we can stipulate as to whether he got there, on or we can
08:53:21 7 stipulate as to what locations he was, but then to have
08:53:21 8 forty-two texts of all this other material that they could
08:53:21 9 have proposed is not rebuttal for the proposition, which
08:53:21 10 would be proper rebuttal, and if it was even remotely
08:53:21 11 relevant to that which was the date, then it would be
08:53:21 12 prejudicial beyond any relevance.

08:53:21 13 THE COURT: So what date did she say?

08:53:21 14 MR. LOWELL: The 15th.

08:53:21 15 THE COURT: And what is the correct date?

08:53:21 16 MR. LOWELL: 17th. It's two days for that.

08:53:21 17 THE COURT: And he left New York on the 19th?

08:53:22 18 MR. LOWELL: 20th.

08:53:22 19 THE COURT: 20th. And so what are the dates of
08:53:22 20 these texts?

08:53:22 21 MR. HINES: The first thing I'll say is all of
08:53:22 22 these text messages do link to our proof that he was still
08:53:22 23 in Delaware on October 15th, but nonetheless our rebuttal
08:53:22 24 case is not limited, there is no rule of evidence that
08:53:22 25 limits a rebuttal case to exactly the words that the defense

08:53:22 1 witness testified to.

08:53:22 2 What I'll say on how it relates to the 15th is
08:53:22 3 that we have location information showing him at a 7-Eleven
08:53:22 4 on October 14th, 15th and 16th, I believe those are the
08:53:22 5 dates that's reflected in the summary chart.

08:53:22 6 And location information and a photograph is
08:53:22 7 just that, it's location information, it does not identify
08:53:22 8 whether the person themselves was actually necessarily at that
08:53:22 9 location because the photograph shows a geolocation, it
08:53:22 10 could have been someone else's photograph. So the other
08:53:22 11 messages that we included are all messages, et cetera, that
08:53:22 12 show the defendant did frequent a 7-Eleven, they are just
08:53:22 13 messages from October 9th through that date when he left the
08:53:22 14 area showing that he was communicating with other
08:53:22 15 individuals to meet at a 7-Eleven.

08:53:22 16 So it shows that, in fact, in that photograph
08:53:22 17 from the date before he goes up to New York of a 7-Eleven
08:53:22 18 does reflect that the defendant does, you know, frequent
08:53:22 19 that location. Relative, probative, including of the fact
08:53:22 20 that defense elicited that he went up to New York on the
08:53:22 21 15th, but it directly refutes that.

08:53:22 22 Moreover, I will also say Naomi Biden testified
08:53:22 23 as to her observations of the defendant in August and then
08:53:22 24 also in October of 2018 and sort of his -- her view, her
08:53:22 25 perception of his state of mind at that time. What these

08:53:22 1 messages show was that, in fact, during that time period,
08:53:22 2 the same period she testified about, he's meeting with other
08:53:22 3 individuals at a 7-Eleven, including around the time of the
08:53:22 4 drug purchase, and the defense has argued that that 7-Eleven
08:53:22 5 text where he's meeting the dealer named Mookie is a lie but
08:53:22 6 what we do see around that time period is, in fact, the
08:53:22 7 defendant is meeting at a 7-Eleven with other individuals.
08:53:22 8 So all of this directly rebuts both the arguments of counsel
08:53:22 9 and the testimony of Ms. Biden.

08:53:22 10 THE COURT: Forty-two? You need forty-two
08:53:22 11 texts?

08:53:22 12 MR. HINES: They're succinct texts. Obviously
08:53:23 13 if there was an issue with any one of them we would be happy
08:53:23 14 to address them with defense counsel. I have a -- would
08:53:23 15 Your Honor like a physical copy?

08:53:23 16 THE COURT: Yes.

08:53:23 17 MR. HINES: So the first page is a series of
08:53:23 18 messages with someone who identifies himself as Junior and a
08:53:23 19 couple of places they talk, both him and defendant talk
08:53:23 20 about meeting at a 7-Eleven.

08:53:23 21 On page 2, number 11, Junior asks, "Do you want
08:53:23 22 the same?"

08:53:23 23 MR. LOWELL: Exactly.

08:53:23 24 MR. HINES: He then begins texting from another
08:53:23 25 phone, I'm at a 7-Eleven now, that's at Row 13. And then

08:53:23 1 the defendant on October 11th says, "Meet me at 7-Eleven at
08:53:23 2 3:00." So the messages --

08:53:23 3 MR. LOWELL: Which row was that?

08:53:23 4 MR. HINES: Row 23. So there is five messages
08:53:23 5 including the Row 25 in which the defendant is communicating
08:53:23 6 about meeting at a 7-Eleven.

08:53:23 7 MR. LOWELL: Judge, even that one -- first of
08:53:23 8 all, again, this is an interesting way to try to get into a
08:53:23 9 rebuttal case that which they could have done in their
08:53:23 10 case-in-chief. And they are trying to take a small item
08:53:23 11 that they said they need to rebut which was when he got to
08:53:23 12 New York into now something way farther and way more
08:53:23 13 prejudicial.

08:53:23 14 For example, this row is on October 11th. Naomi
08:53:23 15 did not say he was on the 11th or the 12th or the 13th or
08:53:23 16 the 14th or the 15th. Again, to create not the prejudice,
08:53:23 17 the possibility we can create the stipulation that would say
08:53:23 18 that he did not get to New York the 15th, it was later and
08:53:23 19 the days that he was in Delaware, he would go to a 7-Eleven
08:53:23 20 if that's what their point is. You can do that in two
08:53:23 21 sentences. But this is extraordinary. This is prejudicial.
08:53:23 22 This is what they could have done, if they had to do it,
08:53:23 23 they didn't do it in their case-in-chief. I got it late
08:53:23 24 night, because it needs to happen in the way that they're
08:53:23 25 saying what they are seeking --

08:53:23 1 THE COURT: Let me take a look at these and take
08:53:23 2 a break.

08:53:23 3 (End of side-bar.)

08:53:23 4 THE COURT: All right. We're going to take just
08:53:23 5 a couple minute break.

08:53:23 6 COURT CLERK: All rise.

09:15:35 7 THE COURT: All right. Everyone can be seated.

09:59:51 8 (Side-bar discussion:)

09:59:51 9 MR. LOWELL: So what I just noticed since we
09:59:51 10 didn't get this and I didn't see it until morning, this
09:59:51 11 starts off with something, now as I look at the testimony it
09:59:51 12 is when he drove it up, do you recall about what day.

09:59:51 13 THE COURT: So I get it, but what I went -- I
09:59:51 14 mean, I just went back and I read her testimony and the
09:59:51 15 problem is she said that he was -- he was in good shape and
09:59:51 16 he -- you asked her, she had said he was clear as I had ever
09:59:51 17 seen him or I had seen him in years and then you said was in
09:59:51 18 October on a par with how clear he was back when you saw him
09:59:51 19 -- and this was you said at the end of October. You were
09:59:51 20 asking her was he sober.

09:59:51 21 MR. LOWELL: Yes, and sober can mean alcohol and
09:59:51 22 sober can mean other things. But judge, again they didn't
09:59:51 23 cross her on any of those. But the point is let's say he
09:59:51 24 was using -- let's assume for the purposes of this that they
09:59:52 25 wanted to put evidence in and there is none directly, all

09:59:52 1 these texts aren't responded to this person he was texts
09:59:52 2 that he was using drugs on the 11th, the 12th, the 13th, the
09:59:52 3 14th the 15th, let's assume that's what they want to say.
09:59:52 4 That has no bearing when she saw him on the 19th whether he
09:59:52 5 looked the same as he did.

09:59:52 6 That is extraordinary taking and shoehorning a
09:59:52 7 proposition that they had the ability -- I looked it up,
09:59:52 8 there is lots of cases talking about rebuttal evidence has
09:59:52 9 to rebut what they say they are seeking to rebut which is
09:59:52 10 what they told us is when, now they're saying they didn't
09:59:52 11 say that before, it is about how she could say on the 20th
09:59:52 12 or the 19th when they saw each other he looked as good as he
09:59:52 13 did, to talk about what he did on the 9th, the 10th, the
09:59:52 14 11th or 12th, they could have confronted her, they did which
09:59:52 15 was something that wasn't true, sending a code to somebody
09:59:52 16 that night which they know was probably a month later.
09:59:52 17 That's the point.

09:59:52 18 Some of these texts I find out are to Finnegan
09:59:52 19 in this period of time, his daughter. To get now to a
09:59:52 20 number of texts -- yeah, Row 12, I understand that, but he
09:59:52 21 doesn't even respond. It's just an extraordinary attempt to
09:59:52 22 shoehorn in a rebuttal case which the case law says you
09:59:52 23 rebut the thing you are rebutting which is where he was,
09:59:52 24 they have all this evidence of where he was, there is not
09:59:52 25 anything on the 15th where they want to rebut that she was

09:59:52 1 wrong, and then on the 16th, for example, is one where there
09:59:52 2 is a text to Finnegan.

09:59:52 3 Judge, I'm sorry, I don't know how to say this
09:59:52 4 better because I'm just flustered by this, but if you think
09:59:52 5 that this -- the door opens because I asked her about what
09:59:52 6 day on the issue of dates and locations, then I don't have
09:59:52 7 any objection to them pointing out where she -- he actually
09:59:52 8 was.

09:59:52 9 THE COURT: Right. But she was testifying that
09:59:52 10 -- she was testifying that he was in the same shape as he
09:59:52 11 was when he was sitting with his sober coach in August.

09:59:52 12 MR. LOWELL: Indeed.

09:59:52 13 THE COURT: And this is circumstantial evidence
09:59:52 14 that he wasn't in that same shape.

09:59:52 15 MR. LOWELL: But there you just made the leap
09:59:52 16 which is terribly, terribly unfair. She said that he
09:59:52 17 looked, she didn't say she gave him a drug test.

09:59:53 18 THE COURT: I know, but Mr. Lowell the reason
09:59:53 19 you put her up there was so that she could say he looked
09:59:53 20 like he wasn't on drugs, that why you put her up there,
09:59:53 21 that's why you were asking her those questions.

09:59:53 22 MR. LOWELL: No, I was asking her to show where
09:59:53 23 the truck was which we did and whether the lock box was
09:59:53 24 intact and she did mention other things.

09:59:53 25 Judge, to be really fair about this, think about

09:59:53 1 what you just said to me, you're saying on the 19th and 20th
09:59:53 2 when her perception is that he looked the same, evidence
09:59:53 3 about what he was doing with whom and where on the 11th or
09:59:53 4 12th or any other day is probative of what she perceived.
09:59:53 5 They asked every witness could he be using drugs and hide
09:59:53 6 it, could he be using drugs and be functional, it is so
09:59:53 7 terrible prejudicial beyond the rebuttal law what is allowed
09:59:53 8 in rebuttal to allow them what they could have done in their
09:59:53 9 case-in-chief, which is exactly what this is about. I don't
09:59:53 10 know why they didn't try. To shoehorn her perception on the
09:59:53 11 20th based on their own evidence which says over and over
09:59:53 12 again that he could be using drugs and you wouldn't even
09:59:53 13 know it. They made that point. They can argue that point.

09:59:53 14 But if Naomi Biden thought on the 20th or the
09:59:53 15 19th he looked the same then we've told you over and over
09:59:53 16 again that he had the ability to do that, but it was not
09:59:53 17 rebuttal to her perception of what he was really doing or
09:59:53 18 who a week before, if you look at these, that's what they're
09:59:53 19 trying to do and if you're suggesting that they can do that,
09:59:53 20 that they can open the door based on one line, two lines,
09:59:53 21 one is about when, and that he looked the same that is so
09:59:53 22 far beyond what rebuttal evidence could be, you see it,
09:59:53 23 Judge, you see what's going on here, they're trying to wedge
09:59:53 24 in because of the about language or her perception and her
09:59:53 25 perception on a day doesn't link to what he was doing a week

09:59:53 1 before.

09:59:53 2 I have said before if that's what they're
09:59:54 3 honestly doing, we can either stipulate to where he was,
09:59:54 4 including if they want to say that on those days he's in
09:59:54 5 Delaware, location data says he's at a 7-Eleven and that
09:59:54 6 does it, but everything else, why, if you allow this in in
09:59:54 7 their rebuttal case, it is beyond what I have just been able
09:59:54 8 to look for in the rebuttal evidence law about what
09:59:54 9 specifically they're going to rebut.

09:59:54 10 And your view that her ability to say that he
09:59:54 11 looked the same to me, and you asked me, I did that, in fact
09:59:54 12 I did that, but it doesn't undercut her saying that given
09:59:54 13 what they have said and admitted, that many times when he
09:59:54 14 was using you wouldn't know he was using drugs, they made
09:59:54 15 that point. What he did on the 11th, now I'm repetitive but
09:59:54 16 this is really changing events.

09:59:54 17 THE COURT: Are you going to say --

09:59:54 18 MR. LOWELL: No, I am not going to say in
09:59:54 19 closing arguments if that's what you're asking that she said
09:59:54 20 he looked the same.

09:59:54 21 MR. HINES: We have to be able to rebut that.
09:59:54 22 What we're proposing is about five, maybe ten minutes of
09:59:54 23 direct about messages over a six-day period that immediately
09:59:54 24 precedes what their defense witness talked about and her
09:59:54 25 observations of the defendant on that date in question and

09:59:54 1 the inaccurate testimony that she provided on the location.
09:59:54 2 All of that rebutting is the defendant, as if Mr. Lowell's
09:59:54 3 argument we're presenting messages from the entire year,
09:59:54 4 it's a very limited window of a very limited purpose which
09:59:54 5 rebuts what she was put on the stand for of which we had no
09:59:54 6 knowledge of what she was going to testify to, no Jencks, no
09:59:54 7 reciprocal discovery, so it's perfectly appropriate for us
09:59:54 8 to use the weekend to go back and see what he was saying and
09:59:54 9 rebut that testimony.

09:59:54 10 MR. LOWELL: I am going to be repetitive, this
09:59:54 11 is a case changing event and it shouldn't be a case changing
09:59:54 12 event where they shoehorn in this. What is relevant to
09:59:54 13 rebut her perception of him on the 19th can be what? If he
09:59:54 14 didn't use drugs two weeks before does that rebut her
09:59:54 15 perception? Six days before we know when he is on crack.
09:59:54 16 He has to do it every twenty minutes according to the
09:59:54 17 testimony. There is a disconnect, there is an extraordinary
09:59:54 18 disconnect from her saying I saw him, maybe she wants to
09:59:54 19 look at him in blinders, maybe she doesn't say what he does,
09:59:55 20 but that's not --

09:59:55 21 THE COURT: Yes. Look.

09:59:55 22 MR. LOWELL: If you're going to allow all those
09:59:55 23 in, Judge, you're going to allow all those in, but I am
09:59:55 24 saying as clearly as I can --

09:59:55 25 THE COURT: I understand. I understand. I

09:59:55 1 mean --

09:59:55 2 MR. LOWELL: Look at the prejudice in each one
09:59:55 3 of those messages.

09:59:55 4 THE COURT: I get it. I get it. But it is
09:59:55 5 rebuttal and the standard is is it unfairly prejudicial.

09:59:55 6 And I don't --

09:59:55 7 MR. LOWELL: How --

09:59:55 8 THE COURT: How is it not -- how is it unfairly
09:59:55 9 prejudicial, I guess because you're saying he was sober and
09:59:55 10 the stuff about Mookie was a lie, and this is contrary to
09:59:55 11 that?

09:59:55 12 MR. LOWELL: She didn't see him on the 10th, the
09:59:55 13 11th, the 12th, the 13th, the 14th, and now we know the
09:59:55 14 15th, she doesn't see him until the 19th. By the way as I
09:59:55 15 said these include people texting him for which he does not
09:59:55 16 text back. And in this it's including him meeting up with
09:59:55 17 women, not drug dealers. And that is again something that
09:59:55 18 if this comes in, I have to start exploring and it just
09:59:55 19 changes the focus of the case which we have scrupulously not
09:59:55 20 done. I see your inclination, but I think you can do this
09:59:55 21 with less.

09:59:55 22 THE COURT: So what about the point that
09:59:55 23 Mr. Lowell just made which is that some of these he doesn't
09:59:55 24 even respond to? So these ones on the 9th, they don't seem
09:59:55 25 to be responded to.

09:59:55 1 MR. HINES: He responds the following day on the
09:59:55 2 tent, meet me at the 7-Eleven now.

09:59:55 3 THE COURT: There is the 10th from the person.

09:59:55 4 MR. HINES: Correct.

09:59:55 5 THE COURT: And then he says can you meet me
09:59:55 6 now.

09:59:55 7 MR. HINES: Right. So the first row is the
09:59:55 8 person asking to meet at the 7-Eleven. The fifth row
09:59:55 9 ultimately the following day Mr. Biden agrees to meet him at
09:59:55 10 the 7-Eleven. So we could cut out numbers 2, 3, and 4 in
09:59:55 11 the middle.

09:59:55 12 MR. LOWELL: Number 8, for example, is this guy
09:59:55 13 saying I have to get off at 3:30, we're going all the way
09:59:55 14 back to the tent for what she perceived to the 19th, that's
09:59:55 15 where I'm saying.

09:59:56 16 THE COURT: The problem is, yes, it's what she
09:59:56 17 perceived to 19th, but the questions were elicited to make
09:59:56 18 it seem like he was doing great from -- I mean, you
09:59:56 19 basically brought her from --

09:59:56 20 MR. LOWELL: Judge, that's unfair to me, I said
09:59:56 21 she saw him one time in Los Angeles, she does not see him in
09:59:56 22 between, I never suggested as your suggestion to me is that
09:59:56 23 she saw him in between. There is a point of time in August
09:59:56 24 and a point of time in on October.

09:59:56 25 THE COURT: Right. And the reason that it was

09:59:56 1 done was to suggest that this had been a longer period of
09:59:56 2 sobriety.

09:59:56 3 MR. LOWELL: You're giving me too much credit.

09:59:56 4 MR. WISE: The question was specifically linking
09:59:56 5 the two.

09:59:56 6 THE COURT: That's why I took the break. I
09:59:56 7 wanted to read the transcript.

09:59:56 8 MR. WISE: He linked the two, it wasn't just one
09:59:56 9 isolated incident.

09:59:56 10 MR. LOWELL: Was he of the same condition, use
09:59:56 11 whatever the phrase was, I'm prepared to live by the phrase
09:59:56 12 but that doesn't do what this says. Here as an example, all
09:59:56 13 the texts that he doesn't respond to, the next day, or the
09:59:56 14 next night he says give me ten, please, that's to his
09:59:56 15 daughter, Finnegan. And he's in Philadelphia. And that's
09:59:56 16 what I have to start unwinding now because each of these has
09:59:56 17 a different possibility.

09:59:56 18 MR. HINES: So immediately after he gets this
09:59:56 19 message he responds give me ten, it is to Finnegan, but it's
09:59:56 20 in this response to a message above it to another person.

09:59:56 21 MR. KOLANSKY: Look at the entire abstract --

09:59:56 22 THE COURT: You don't talk to each other when
09:59:56 23 I'm here, you talk to me. So we're taking out 12.

09:59:56 24 MR. LOWELL: Judge, I'm asking that this is far
09:59:56 25 in excess even for the proposition that you want, and I

09:59:56 1 would -- you seem to be inclined to let them do this, and I
09:59:56 2 think it's wrong.

09:59:56 3 THE COURT: I understand. And I -- I understand
09:59:56 4 what the problem is, and I wish we weren't in this
09:59:56 5 situation, but the fact is that I do think it's fair
09:59:56 6 rebuttal, it may be prejudicial, but I don't think it's
09:59:56 7 unfairly prejudicial.

09:59:56 8 MR. LOWELL: How can it not be unfairly
09:59:56 9 prejudicial to allow texts which most of all of them are not
09:59:56 10 responded to and are misleadingly so when he says ten
09:59:56 11 minutes for more than a week from the time the witness
09:59:56 12 testified that she perceived him as evidence that the way
09:59:57 13 that she perceived him on August the 19th or the 20th is
09:59:57 14 anyway rebuttal by what he was doing five days before.

09:59:57 15 The question in evidence is how she perceived
09:59:57 16 him, not whether he was or was not using. And it is unfair
09:59:57 17 in another way as you tried to suggest that my question said
09:59:57 18 that she was well aware of how he was from the moment he
09:59:57 19 left Los Angeles all the way to the time she saw him in New
09:59:57 20 York, that is what this does.

09:59:57 21 MR. HINES: May I offer a proposal? So there
09:59:57 22 are messages in between the 7-Eleven stamps where the dealer
09:59:57 23 is sending a series of messages in a row and it doesn't
09:59:57 24 relate to 7-Eleven, some of them we can take out to truncate
09:59:57 25 them, we included them so Mr. Lowell could have a full

09:59:57 1 snapshot, we're happy to remove rows 2 through 4.

09:59:57 2 MR. LOWELL: Need less to say --

09:59:57 3 THE COURT: You're going to have to --

09:59:57 4 MR. LOWELL: Go ahead.

09:59:57 5 MR. HINES: On the following page we've agreed

09:59:57 6 to remove Row 12, we can also remove rows 14, 1516 -- 16

09:59:57 7 through 20, we can delete those. So all those middle

09:59:57 8 messages with the drug dealer can be taken out. So it's

09:59:57 9 limited to the set up and the meets on the 7-Eleven.

09:59:57 10 MR. LOWELL: I'm sorry, which -- it just says --

09:59:57 11 THE COURT: 16 through 21.

09:59:57 12 MR. LOWELL: And then, Your Honor, 21, this is

09:59:57 13 if guy not saying anything about a 7-Eleven, just --

09:59:57 14 MR. HINES: He's texting from a new phone number

09:59:57 15 now.

09:59:57 16 MR. LOWELL: He is, he being Q.

09:59:57 17 MR. HINES: Correct. He's texting from a new

09:59:57 18 phone saying I lost my cell and Mr. Biden responds to that

09:59:57 19 later in the evening at 6:41 saying meet me at the 7-Eleven.

09:59:57 20 MR. LOWELL: Not -- I'll come back to this, then

09:59:57 21 if you're looking about saying meet me at the 7-Eleven at

09:59:57 22 3:00, the one before it is "come on dude, you can do it, the

09:59:57 23 way you invited to my bro to join a private party."

09:59:57 24 I mean, that's the one, then you don't need 21,

09:59:57 25 you need 22 for that, his response.

09:59:57 1 MR. HINES: I mean, 21 shows it's the same
09:59:57 2 person as the previous messages.

09:59:57 3 MR. LOWELL: Right, but so does the next one, so
09:59:57 4 does 22.

09:59:57 5 MR. HINES: He doesn't say my name is Q in 22.

09:59:57 6 MR. LOWELL: Yeah, but the phone number is
09:59:57 7 exactly the same.

09:59:57 8 MR. HINES: But it's a different phone number
09:59:57 9 from the messages in the beginning, he changes his phone
09:59:58 10 number so he reaches out to Mr. Biden with his new phone
09:59:58 11 number and says it's Q and Mr. Biden says meet me at the
09:59:58 12 7-Eleven at 3:00.

09:59:58 13 MR. LOWELL: 21 should be in and 22 is out
09:59:58 14 because that's, you're saying you read it for the purposes,
09:59:58 15 it's a guy named Q with a new phone number.

09:59:58 16 MR. HINES: We can take 22 out.

09:59:58 17 MR. LOWELL: And then 23, meet me at 7-Eleven,
09:59:58 18 and then the guys says, that's not necessary because you
09:59:58 19 have made your point and then we're back to the ones with
09:59:58 20 Hallie and all the rest are not necessary.

09:59:58 21 MR. HINES: The other ones are location
09:59:58 22 information showing him in Delaware and at a 7-Eleven.

09:59:58 23 MR. LOWELL: I haven't checked that location
09:59:58 24 data, Judge, and we have made that 7-Eleven point by what he
09:59:58 25 has just said it does that when he says in his response, and

09:59:58 1 I haven't been able to check this, I don't know that it's
09:59:58 2 necessary. I stipulated that he was between the -- whatever
09:59:58 3 the date and the date he left in Delaware or wherever he was
09:59:58 4 --

09:59:58 5 THE COURT: So there were questions asked,
09:59:58 6 somebody, do you know, it might have been the FBI woman, do
09:59:58 7 you know if he was actually at the 7-Eleven. Maybe it was
09:59:58 8 Ms. Biden.

09:59:58 9 MR. WISE: It was Special Agent Janssen and
09:59:58 10 Romig, both of them.

09:59:58 11 THE COURT: Do you know if he was there? Are
09:59:58 12 you going to contest that he was there?

09:59:58 13 MR. LOWELL: On the 13th, but not on the 16th I
09:59:58 14 won't contest it if this is accurate, but that's not the
09:59:58 15 same as on the 13th. I mean, people go to 7-Elevens other
09:59:58 16 than to meet up with people. I think they sell slurpies, so
09:59:58 17 I don't contest that on the 16th.

09:59:58 18 MR. WISE: I mean it's highly probative that
09:59:58 19 it's a 7-Eleven on the 16th, it's not just somewhere, it's
09:59:58 20 not that he is in Delaware.

09:59:58 21 MR. LOWELL: But it's three days later, to say
09:59:58 22 that somebody frequents a 7-Eleven when they're on in
09:59:58 23 Delaware on three days later when he says he was at the
09:59:58 24 7-Eleven, doesn't mean he was at the 7-Eleven, it would be
09:59:58 25 if it was a unique place, I don't know what could be a

09:59:58 1 unique place in downtown Wilmington that would make sense,
09:59:58 2 but to make the leap of what that means on the 16th or 17th
09:59:58 3 means that he was there on the 13th, that's just a leap.

09:59:58 4 MR. WISE: He's setting up meetings at the
09:59:58 5 7-Eleven, he's not going into to buy ChapStick.

09:59:58 6 MR. HINES: Just to explain what we're looking
09:59:58 7 at, rows 26 to 28 Mr. Biden is placing himself in Delaware
09:59:58 8 with his communications with Hallie Biden, the address in
09:59:58 9 Greenville is her address, I can't get in, it's not just
09:59:58 10 looking at the following line which advertise 7-Eleven.

09:59:58 11 MR. LOWELL: Exactly.

09:59:59 12 THE COURT: So she actually saw him on the 16th.

09:59:59 13 MR. HINES: So he's saying I'm at her address.

09:59:59 14 MR. LOWELL: I'm here, I can't get in.

09:59:59 15 MR. HINES: Right.

09:59:59 16 MR. LOWELL: So it doesn't mean that he saw, and
09:59:59 17 more importantly, after she says that, he can't get in is
09:59:59 18 when he goes to the 7-Eleven at 4 o'clock in the morning,
09:59:59 19 probably to get coffee.

09:59:59 20 MR. HINES: So we can delete 26 to 28. We put
09:59:59 21 them in for clarity, if you're not going to cross on that
09:59:59 22 topic.

09:59:59 23 MR. LOWELL: 25 is already in and therefore it's
09:59:59 24 not rebuttal, that would be cumulative.

09:59:59 25 MR. HINES: But 25 is reference to 7-Eleven, so

09:59:59 1 that's the one message from the summary chart that we've
09:59:59 2 included here from before for context so the jury
09:59:59 3 understands.

09:59:59 4 MR. WISE: It's already in evidence.

09:59:59 5 MR. HINES: So we'll keep 29, we'll keep 30,
09:59:59 6 that also keeps him at the 7-Eleven.

09:59:59 7 MR. LOWELL: Hold on a second.

09:59:59 8 MR. HINES: We can delete 31.

09:59:59 9 MR. LOWELL: It's five minutes apart, we don't
09:59:59 10 need to point out multiple times in the same cup of coffee
09:59:59 11 that he's at the 7-Eleven at 5 or 75 or 7 '07 later.

09:59:59 12 MR. HINES: That's exactly why, you're calling
09:59:59 13 it a cup of coffee, once I remove that second message you'll
09:59:59 14 call it a drive by so having that is important to show a
09:59:59 15 meet.

09:59:59 16 MR. LOWELL: Showing a meet.

09:59:59 17 MR. HINES: Showing he's at the 7-Eleven.

09:59:59 18 MR. LOWELL: We'll stipulate that he was at the
09:59:59 19 7-Eleven after he can't get into Hallie's house.

09:59:59 20 MR. HINES: He's still there on Row 30, we'll
09:59:59 21 delete Row 31.

09:59:59 22 MR. LOWELL: Where he's asking four minutes
09:59:59 23 later, are you up, as if he's waiting for her to be up, not
09:59:59 24 that he's sitting there waiting, he's at the 7-Eleven.

09:59:59 25 MR. HINES: We'll take it out. We'll take out

09:59:59 1 Row 32 as well.

09:59:59 2 MR. LOWELL: I don't see why 30 and 31 is
09:59:59 3 necessary if the point he was there and you see it, I
09:59:59 4 mean --

09:59:59 5 MR. HINES: 29 and 30 establish he was at the
09:59:59 6 7-Eleven.

09:59:59 7 MR. LOWELL: 29 establishes he was at the
09:59:59 8 7-Eleven.

09:59:59 9 MR. HINES: And 30 establishes he's at the
09:59:59 10 7-Eleven seven minutes later, eight minutes later.

09:59:59 11 MR. LOWELL: Yeah, with what probative value,
09:59:59 12 that means for sure it means what you want it to mean at
09:59:59 13 five in the morning.

09:59:59 14 THE COURT: Look. You're going to say he was
09:59:59 15 getting a cup of coffee and maybe he was getting a cup of
09:59:59 16 coffee, but this is circumstantial evidence that he was --

10:00:00 17 MR. LOWELL: Why do we need both is what I'm
10:00:00 18 saying, what difference does it make?

10:00:00 19 THE COURT: Because it's the time.

10:00:00 20 MR. LOWELL: 5:12, four minutes later from
10:00:00 21 Row 29. How is that probative that he was there for four
10:00:00 22 minutes.

10:00:00 23 MR. HINES: I think we count differently, seven
10:00:00 24 minutes is the difference in time.

10:00:00 25 MR. LOWELL: Wait, 5 or 5, 12, you're right my

10:00:00 1 math is wrong.

10:00:00 2 THE COURT: 29 and 30, okay.

10:00:00 3 What's next?

10:00:00 4 MR. HINES: So then we agreed to take out 31,

10:00:00 5 32.

10:00:00 6 MR. LOWELL: No, I want 32 in.

10:00:00 7 MR. HINES: All right. So then we got to go

10:00:00 8 back to the ones that we took out on the previous page.

10:00:00 9 MR. LOWELL: You took out one on this page, the

10:00:00 10 Judge is saying 29 and 30.

10:00:00 11 MR. HINES: Look, you just us to take out rows

10:00:00 12 26 through 28 which were messages with Hallie.

10:00:00 13 MR. LOWELL: Let's do that, then?

10:00:00 14 MR. HINES: So 26 and 28 are the same thing as

10:00:00 15 32, they're messages with Hallie about trying --

10:00:00 16 MR. LOWELL: 26, 27, 28 is out, 29 you're saying

10:00:00 17 you would keep in. 30 --

10:00:00 18 THE COURT: Hold on. 26 through 28 are

10:00:00 19 communications with Hallie Biden.

10:00:00 20 MR. HINES: Correct.

10:00:00 21 THE COURT: And you're saying if he wants the

10:00:00 22 later communication with Hallie Biden in, you want the

10:00:00 23 earlier communications with Hallie Biden.

10:00:00 24 MR. HINES: Correct.

10:00:00 25 MR. LOWELL: Wait. Starting with 20 --

10:00:00 1 THE COURT: Six.

10:00:00 2 MR. LOWELL: Yeah, you can put 26 back in. You
10:00:00 3 can put 27 back in. Then he goes to 28 out, 29 gets you
10:00:00 4 what you just said you needed, that's where he is at that
10:00:00 5 hour. And then I still object to 30 because we've made the
10:00:00 6 point. And then I guess the end of the story is 32, that
10:00:00 7 "are you up" because you have now included the others.

10:00:00 8 MR. HINES: So the end of the story will be 33
10:00:00 9 because he goes back to the place in the middle of the
10:00:00 10 night.

10:00:00 11 MR. LOWELL: Wait. Goes back to -- he's there.

10:00:00 12 MR. HINES: That's her location in Greenville.

10:00:00 13 MR. LOWELL: He doesn't leave, there is no
10:00:00 14 indication that Hallie was up and he went there and went
10:00:00 15 back.

10:00:00 16 MR. HINES: Row 33, Mr. Lowell is Greenville
10:00:00 17 Delaware, that is her specific geolocation information for
10:00:00 18 her residence, so he does go back in the middle of the night
10:00:01 19 and you want us to keep those messages in with Hallie, we're
10:00:01 20 happy to do it, do you want them in or out?

10:00:01 21 MR. LOWELL: As I said to not get beyond where
10:00:01 22 we are, I take out 32, 33, 34, 35.

10:00:01 23 THE COURT: You now want 32 out?

10:00:01 24 MR. LOWELL: Well, to get 32 in which ends where
10:00:01 25 he is, we need to get in that he goes back somewhere else,

10:00:01 1 it's Greenville on 33, it's Greenville on 34, I thought I
10:00:01 2 just heard him say that that means he's at Hallie's, that
10:00:01 3 Greenville is her, Lancaster is 7-Eleven so I don't mind
10:00:01 4 keeping 33 and 34 in if it indicates where he is on those
10:00:01 5 two days.

10:00:01 6 THE COURT: So 32 to 34 okay.

10:00:01 7 MR. LOWELL: Yes.

10:00:01 8 MR. HINES: We can remove 35.

10:00:01 9 MR. LOWELL: 35 is out. And then --

10:00:01 10 MR. HINES: We can remove 36, 37.

10:00:01 11 MR. LOWELL: 38 is in New York where there is --
10:00:01 12 and, Your Honor, that is not about as I pointed out before
10:00:01 13 any drug dealing, that's a woman.

10:00:01 14 MR. HINES: So 38 shows he's in New York on the
10:00:01 15 17th which rebuts Naomi which she says in answer to your
10:00:01 16 question that he was there on October 15th.

10:00:01 17 MR. LOWELL: Yes, but the problem is to get that
10:00:01 18 point you're actually, can you hang out tonight the
10:00:01 19 inference is with a drug dealer and that's what's improper
10:00:01 20 about it. That's not what that is. Use the location data
10:00:01 21 in 39 if that's what you want to point out.

10:00:01 22 MR. HINES: I mean, it's an admission that he's
10:00:01 23 in New York on the 17th and it rebuts a point that you
10:00:01 24 elicited from Naomi.

10:00:01 25 THE COURT: He's saying you can rebut it with

10:00:01 1 line 39, it does sort of sound like he's setting up a drug
10:00:01 2 deal, actually I have no idea if he was meeting up with a
10:00:01 3 woman or a drug dealer.

10:00:01 4 MR. LOWELL: But I have to suggest that with
10:00:01 5 crossing the agent and that opens a door that I don't want
10:00:01 6 to open it's unnecessary.

10:00:01 7 MR. HINES: We'll delete 38 and we can take out

10:00:01 8 --

10:00:01 9 MR. LOWELL: 40 is the same. 41 would be the
10:00:01 10 same. I mean, there is no context that on the 18th 19th and
10:00:01 11 20th he's in New York had, these are the dates, they're
10:00:01 12 trying to say let's shoehorn all this because it's she said
10:00:01 13 it's about the 15th and consequently why are we contesting
10:00:01 14 it was the 18th, 19th and 20th?

10:00:01 15 MR. HINES: It was elicited by you, so we have a
10:00:01 16 right to rebut this.

10:00:01 17 MR. LOWELL: It's inconsistent with what she
10:00:02 18 said.

10:00:02 19 MR. HINES: 39 is the location but it is the
10:00:02 20 same issue as before, a location on a photo shows that the
10:00:02 21 photo was taken at a certain location, its doesn't show that
10:00:02 22 the person necessarily who was using the device was in that
10:00:02 23 place so these messages confirm, both 30, 29 and 41 show he
10:00:02 24 was at the Four Seasons so it shows his location in New York
10:00:02 25 was accurate on Row 39.

10:00:02 1 MR. LOWELL: They can say for 30 it's okay to
10:00:02 2 use the location data which doesn't necessarily mean he was
10:00:02 3 there and now they're saying.

10:00:02 4 THE COURT: No, they're saying it by itself
10:00:02 5 doesn't show he was there, that's why they want the stuff
10:00:02 6 surrounding it. With respect the one where we said okay,
10:00:02 7 for the location data --

10:00:02 8 MR. LOWELL: For example --

10:00:02 9 THE COURT: 29 and 30.

10:00:02 10 MR. LOWELL: That doesn't have the text that
10:00:02 11 confirms that's where it is, it just has the location data,
10:00:02 12 no differently than the location data that they're pointing
10:00:02 13 out where they can get in can you hang out tonight, I'm in
10:00:02 14 New York, that is just not necessary for the proposition and
10:00:02 15 it opens the door and that is unfair prejudice because 39
10:00:02 16 says where he is, it's okay to say where he is.

10:00:02 17 THE COURT: Here is my question though, you know
10:00:02 18 he's in New York on the 18th right? Why are we showing he's
10:00:02 19 in New York on the 18th.

10:00:02 20 MR. WISE: One of the things I brought out on
10:00:02 21 cross is this kind of frenetic erratic attempt to get
10:00:02 22 together after the testimony that he was clear eyed and that
10:00:02 23 is contradicted by that. And this rebuts the testimony that
10:00:02 24 they had this meeting and he was clear eyed and this shows
10:00:02 25 that he's there and he's not meeting with her and instead

10:00:02 1 he's having people come to his hotel room in the middle of
10:00:02 2 the night. And I asked her about that and she said she
10:00:02 3 didn't know anything about that. And this goes to that.

10:00:02 4 MR. LOWELL: Two different points there, Judge.
10:00:02 5 There is no contest about what's already in, this is now
10:00:02 6 beyond rebuttal. It's beyond rebuttal. We know he's in New
10:00:02 7 York. They've already established what's going on in the
10:00:02 8 middle of the night. And now they want to introduce
10:00:02 9 something which says can you hang out for the proposition
10:00:02 10 that he's in New York. If that's not unfair prejudice for
10:00:02 11 the point they're making, then I don't know what is.

10:00:02 12 They don't do that because -- there is no
10:00:03 13 contest that he's there. And the fact that Hallie -- sorry,
10:00:03 14 that Naomi -- I take it back. The idea that Naomi and he
10:00:03 15 cannot get together is something that they've pointed out.
10:00:03 16 This does nothing to elucidate or rebut that point, nothing
10:00:03 17 at all, and he's in New York, there is no rebuttal, because
10:00:03 18 we know he's there and she says he's there, and the text and
10:00:03 19 evidence already point out that he's there and he's having
10:00:03 20 this issue with her.

10:00:03 21 By the way I want to state something on the
10:00:03 22 record something that I only alluded to before as long as
10:00:03 23 we're doing this, they asked Naomi Biden in that exchange in
10:00:03 24 the middle of the night, did you know he was, I forgot the
10:00:03 25 exact phrase, but texting, and then ultimately, we didn't

10:00:03 1 have that material, we have gone back and found it over the
10:00:03 2 weekend. Judge, it was a month later in November and they
10:00:03 3 made her and the jury believe that that's what was happening
10:00:03 4 in that period of time. And they're yelling, and that's
10:00:03 5 what this is about.

10:00:03 6 THE COURT: I am going to instruct the jury,
10:00:03 7 once again, I added in the evidence what is and is not
10:00:03 8 evidence, I'm going to tell the jury that any questions are
10:00:03 9 not evidence.

10:00:03 10 MR. LOWELL: I just wanted the record to show
10:00:03 11 that.

10:00:03 12 MR. WISE: And I'll say that there are messages
10:00:03 13 both in October with Frankie, and in December.

10:00:03 14 MR. LOWELL: It's not what you said to Naomi
10:00:03 15 Biden and it's not what you said to the jury. You said --

10:00:03 16 MR. WISE: I get yelled at now?

10:00:03 17 MR. LOWELL: You said in the middle of the night
10:00:03 18 did you --

10:00:03 19 THE COURT: Again --

10:00:03 20 MR. LOWELL: That's not what they said, and the
10:00:03 21 idea.

10:00:03 22 THE COURT:

10:00:03 23 MR. HINES: Now you get yelled at.

10:00:03 24 MR. LOWELL: You didn't say it, they said it.

10:00:03 25 MR. WISE: Your Honor, just on the rebuttal

10:00:03 1 points, Mr. Lowell then elicited on redirect on the reason
10:00:03 2 you weren't getting together was because you were too busy
10:00:03 3 with court or whatever, this goes to show that's not the
10:00:03 4 case.

10:00:03 5 MR. LOWELL: Well, it doesn't say -- actually
10:00:03 6 you're wrong, it says can you hang out, there is no response
10:00:03 7 that the person came.

10:00:03 8 THE COURT: All right. I think it's rebuttal.
10:00:03 9 What about these last two.

10:00:03 10 MR. HINES: We can delete these last 2, 42 and
10:00:03 11 43.

10:00:03 12 MR. LOWELL: Wait, can you leave out in New
10:00:03 13 York, I thought that was out.

10:00:03 14 THE COURT: No, it was again because of her
10:00:04 15 schedule, not his, so I'm going to let that in.

10:00:04 16 All right. What 62 what about 39? 39 is
10:00:04 17 unnecessary, then.

10:00:04 18 MR. HINES: We can take out -- no, 39 is
10:00:04 19 necessary.

10:00:04 20 THE COURT: We have 39, 40, 41, can we take out
10:00:04 21 42 and 43?

10:00:04 22 MR. LOWELL: 41, 42 and 43.

10:00:04 23 MR. HINES: Take out 42 and 43.

10:00:04 24 MR. LOWELL: 40, 41 -- we don't need room 810.
10:00:04 25 Judge, that is a woman. And I don't get it, we're putting

10:00:04 1 in can you hang out already, that's kind of enough.

10:00:04 2 THE COURT: I thought we took "can you hang
10:00:04 3 out," out.

10:00:04 4 MR. LOWELL: Yes, it's out.

10:00:04 5 MR. HINES: I think that's in because it shows
10:00:04 6 he's in New York.

10:00:04 7 MR. LOWELL: No, the location data in number 39,
10:00:04 8 which is in the afternoon of 12:36 is beyond the point of
10:00:04 9 what's happening on the 17th in the middle of the night,
10:00:04 10 there is no contest by the 18th at 12:36, if you want that,
10:00:04 11 fine, but hang out tonight. Judge, what would I have to do
10:00:04 12 to try to clear up that that's not a drug deal? I would
10:00:04 13 have to ask her something she does or does not know. Agent,
10:00:04 14 do you know whether he was meeting with somebody for drugs
10:00:04 15 or for a woman to have sex with? And I don't want to have
10:00:04 16 to do that.

10:00:04 17 THE COURT: All right. I'm sorry, I had 38 was
10:00:04 18 out.

10:00:04 19 MR. LOWELL: 38 is out. So did I, that's why.

10:00:04 20 THE COURT: But I'm going to let 39, 40 and 41?

10:00:04 21 MR. LOWELL: 40 and 41, that's out, you're
10:00:04 22 putting it back in.

10:00:04 23 THE COURT: I never took it out. I have no
10:00:04 24 cross out marks on here. I took out 42 and 43.

10:00:04 25 MR. LOWELL: Right. But 41 is room 810, 41 has

10:00:04 1 been, that's the same issue as the one above, it's not a
10:00:04 2 drug deal. And I have to do the same for that as I would
10:00:04 3 have to do for that, and then the next one, call me is.

10:00:04 4 THE COURT: Call me is kind of point less, but
10:00:04 5 whatever.

10:00:04 6 MR. LOWELL: How can I -- what do I deal with
10:00:04 7 with Room 810 at Four Seasons, why is that relevant to the
10:00:04 8 rebuttal point, the rebuttal point is he's in New York,
10:00:04 9 that's not what he said as to why he can't be seen, they've
10:00:04 10 already established that, that is as prejudicial as 38 when
10:00:04 11 you say Room 810 at The Four Seasons, I can't possible deal
10:00:04 12 with that, that's something I don't want them to have to
10:00:04 13 open the door for unless they want to have him tried for
10:00:04 14 using a prostitute, that's just wrong. How could that not
10:00:04 15 be what you used the phrase unfair prejudice beyond the
10:00:04 16 probative value in rebuttal, they got what they needed in
10:00:04 17 the location.

10:00:05 18 THE COURT: Do you want to respond?

10:00:05 19 MR. HINES: I think we have argued this
10:00:05 20 significantly. It shows he is in New York. It has zero
10:00:05 21 location information, in New York, the message Room 810 at
10:00:05 22 The Four Seasons is not unduly prejudicial, we're not going
10:00:05 23 to be suggesting he's leaving with a prostitutes or whatever
10:00:05 24 Mr. Lowell is saying, there is no evidence that is what he
10:00:05 25 is doing in these messages, I think it's fine --

10:00:05 1 THE COURT: The jury can decide whether -- so 2,
10:00:05 2 3, 4 out. 12 out. 14, 15, 16, 17, 18, 19, 20, out. 22,
10:00:05 3 out. 24, out.

10:00:05 4 MR. LOWELL: I'm sorry, what about 23 -- okay,
10:00:05 5 24 out.

10:00:05 6 THE COURT: 28 out.

10:00:05 7 MR. LOWELL: No, 26, 27, 28, they said were out.
10:00:05 8 THE COURT: So are we in with Hallie's house or
10:00:05 9 out?

10:00:05 10 MR. HINES: We're okay with out, but Mr. Lowell
10:00:05 11 is reversed on the following page and then he asked for
10:00:05 12 these to stay back in.

10:00:05 13 THE COURT: The question is 32 goes with 26 and
10:00:05 14 27, either all in or all out.

10:00:05 15 MR. LOWELL: 26 and 27 are in, I'm sorry. 28
10:00:05 16 you said was out. 30 is his geolocation at the 7-Eleven.

10:00:05 17 THE COURT: So 29 and 30 are in.

10:00:05 18 MR. HINES: I'm sorry, what did we say about 26
10:00:05 19 through 28?

10:00:05 20 MR. LOWELL: We said 26 is in. 27 is in.

10:00:05 21 THE COURT: And then you don't need 28, right?
10:00:05 22 Or do you need 28, it's at her house.

10:00:05 23 MR. HINES: We do because it shows that he does
10:00:05 24 go back there.

10:00:05 25 MR. LOWELL: Goes back to Hallie's house.

10:00:05 1 THE COURT: 26, 27, 28, 29, 30 are in.

10:00:05 2 MR. LOWELL: I'm sorry, 29 is that -- okay, 29

10:00:05 3 is in. 30?

10:00:05 4 THE COURT: Is in?

10:00:05 5 MR. LOWELL: 31 is out.

10:00:05 6 THE COURT: 31 is out.

10:00:05 7 MR. LOWELL: What did we decide about 32?

10:00:05 8 THE COURT: I thought you wanted it in.

10:00:05 9 MR. LOWELL: Right the other ones are in, are

10:00:05 10 you up?

10:00:05 11 THE COURT: 35 is out.

10:00:05 12 MR. LOWELL: 33 is out.

10:00:05 13 THE COURT: No.

10:00:05 14 MR. LOWELL: 33 is in because he's with Hallie.

10:00:05 15 THE COURT: Yes.

10:00:05 16 MR. LOWELL: 34 he's still with Hallie.

10:00:05 17 THE COURT: 35 is out.

10:00:05 18 MR. LOWELL: 36 is out. 37 is out. 38 is out.

10:00:05 19 MR. WISE: Why don't we let you do it?

10:00:05 20 THE COURT: Are you ruling?

10:00:05 21 MR. LOWELL: No, I'm checking. I'm checking.

10:00:05 22 THE COURT: All right. 39, 40, 41 are in. 42

10:00:05 23 and 43 are out.

10:00:05 24 MR. LOWELL: Room 810 after you just got can you

10:00:05 25 hang out, I thought that one is out. They get 40 in. 38 is

10:00:06 1 out. So why if 38 is out, 40 is in, if it's the same
10:00:06 2 problem when they have the location data in between that
10:00:06 3 tells where he is.

10:00:06 4 THE COURT: I think the difference is 38 -- 38
10:00:06 5 says -- well, he says he's in New York, I don't remember why
10:00:06 6 we're putting that out. But 39 you have the location data
10:00:06 7 plus you have additional support for the fact that he was
10:00:06 8 there at that location in the message.

10:00:06 9 MR. HINES: Correct.

10:00:06 10 MR. LOWELL: So tell me what -- I'm sorry, now
10:00:06 11 I'm confused. 38 we decided is out.

10:00:06 12 THE COURT: Yes. I don't know why, if you want
10:00:06 13 it in, we can put it in, but they agreed to take it out, so
10:00:06 14 I was not fighting with people who want to take things out.

10:00:06 15 MR. LOWELL: Right. And then 40 that says Room
10:00:06 16 810.

10:00:06 17 THE COURT: Four Seasons because it is the
10:00:06 18 location data, 58th and Madison at The Four Seasons and
10:00:06 19 that's additional evidence. I don't know what the call me
10:00:06 20 does for you.

10:00:06 21 MR. LOWELL: Can you redact Room 810 and just
10:00:06 22 say Four Seasons to confirm that, what room is just
10:00:06 23 unnecessary, just redact that that says what room is he in,
10:00:06 24 if the point that they say is to corroborate the location
10:00:06 25 data, that does it.

10:00:06 1 THE COURT: I'm going to leave the room in, but
10:00:06 2 do you need 41?

10:00:06 3 MR. HINES: No.

10:00:06 4 THE COURT: Take out 41.

10:00:06 5 MR. LOWELL: 42 and 43.

10:00:06 6 THE COURT: Yes.

10:00:06 7 MR. HINES: We'll need about five minutes to
10:00:06 8 update this summary chart.

10:00:06 9 THE COURT: All right. Do you want me to do
10:00:06 10 this colloquy of your client on not testifying?

10:00:06 11 MR. LOWELL: Do you need to do that, can I just
10:00:06 12 state it when I rest?

10:00:06 13 MR. HINES: No.

10:00:06 14 MR. WISE: No we need the colloquy.

10:00:06 15 THE COURT: I think we need the colloquy. Can
10:00:06 16 you just bring him up here?

10:00:06 17 MR. LOWELL: Yes. Can I do that now?

10:00:06 18 THE COURT: All right. So I have to do this
10:00:06 19 colloquy just to make sure that you knowingly decided not to
10:00:06 20 testify. Okay?

10:00:06 21 THE DEFENDANT: Yes.

10:00:06 22 THE COURT: You understand you have the right to
10:00:06 23 testify in your own defense?

10:00:06 24 THE DEFENDANT: I do.

10:00:06 25 THE COURT: If you don't testify, you understand

10:00:06 1 your decision not to testify cannot be held against you and
10:00:06 2 I will instruct the jury to that effect?

10:00:06 3 THE DEFENDANT: Agreed.

10:00:06 4 THE COURT: It's your decision and yours alone
10:00:06 5 to make, do you understand that?

10:00:06 6 THE DEFENDANT: I do.

10:00:06 7 THE COURT: It's not your attorney's decision,
10:00:06 8 it's not the government's decision, it's not my decision,
10:00:06 9 you understand all that?

10:00:06 10 THE DEFENDANT: I do.

10:00:06 11 THE COURT: I do these for lots of different
10:00:06 12 folks, so I understand you're a lawyer, but I'm going to do
10:00:06 13 it anyway.

10:00:06 14 Did you make a decision not to testify
10:00:06 15 voluntarily?

10:00:06 16 THE DEFENDANT: I did.

10:00:06 17 THE COURT: Did anyone threaten you or force you
10:00:07 18 to make that decision?

10:00:07 19 THE DEFENDANT: No.

10:00:07 20 THE COURT: Do you feel like you're being
10:00:07 21 pressured not to testify against your own will?

10:00:07 22 THE DEFENDANT: No.

10:00:07 23 THE COURT: Have you discussed if you should
10:00:07 24 testify with your counsel?

10:00:07 25 THE DEFENDANT: I have.

10:00:07 1 THE COURT: Are you satisfied with the advice
10:00:07 2 and representation you have gotten from him?

10:00:07 3 THE DEFENDANT: Yes.

10:00:07 4 THE COURT: Anything else?

10:00:07 5 MR. LOWELL: No.

10:00:07 6 THE COURT: Anything else?

10:00:07 7 MR. HINES: No.

10:00:07 8 THE COURT: All right. Thank you very much.

10:00:07 9 The other thing I was going to do is what I
10:00:07 10 typically do for when we start closing is just to minimize
10:00:07 11 disruption, I have them close off the doors, lock the doors,
10:00:07 12 and anyone else who comes and goes will be in the overflow
10:00:07 13 room. Any problems with that?

10:00:07 14 MR. LOWELL: No, I think if that's Your Honor's
10:00:07 15 practice.

10:00:07 16 MR. HINES: We have no issue with that.

10:00:07 17 MR. LOWELL: A couple things at the bench just
10:00:07 18 to have time saving, please. First, so we'll fix this.
10:00:07 19 Then Agent Jensen will get to stand, we'll cross her as much
10:00:07 20 as I am able on this. But before that, I have to rest, I
10:00:07 21 have to renew my Rule 29, the material, and I expect you
10:00:07 22 will say you reserve as you did, but I need to do that.

10:00:07 23 THE COURT: Absolutely.

10:00:07 24 MR. LOWELL: And then I have this one issue, did
10:00:07 25 you check in terms of before I rest, I have to move in your

10:00:07 1 Exhibit 31 A if you said it hasn't been.

10:00:07 2 MR. HINES: That's fine, we have no objection.

10:00:07 3 MR. LOWELL: Can we do that now, is that

10:00:07 4 already --

10:00:07 5 THE COURT: It's admitted.

10:00:07 6 MR. LOWELL: So without any objection, we have

10:00:07 7 moved in government Exhibit 31A so I don't have to do that.

10:00:07 8 THE COURT: Admitted.

10:00:07 9 (Government Exhibit No. 31A was admitted into

10:00:07 10 evidence.)

10:00:07 11 MR. LOWELL: Anything else I missed? No, I

10:00:07 12 don't want to do that. He's good. I think that's it.

10:00:07 13 THE COURT: Okay. So that's all fine, you can

10:00:07 14 do all of that -- so you haven't rested yet, so you can't

10:00:07 15 make your motion.

10:00:07 16 MR. LOWELL: I haven't rested yet, but I can't

10:00:07 17 make my motion. I guess for the purposes --

10:00:07 18 THE COURT: You can just say Your Honor, I renew

10:00:07 19 my motion, and I'll say thank you, I reserve.

10:00:07 20 MR. LOWELL: Okay. And then timing wise, how do

10:00:07 21 we do this, it's 10:00, so this will take a little time for

10:00:07 22 their rebuttal case, do they rest again, I have forgotten --

10:00:07 23 MR. HINES: I'm sorry?

10:00:07 24 MR. LOWELL: Do you rest after you do a rebuttal

10:00:07 25 case, I don't know that you say that on a rebuttal case, I

10:00:07 1 don't think so. Where do we go from there?

10:00:07 2 THE COURT: What I typically do, I typically do
10:00:07 3 jury instructions first.

10:00:07 4 MR. LOWELL: I thought you said last.

10:00:07 5 THE COURT: What I usually do is jury
10:00:07 6 instructions up to the point where I tell the jury what they
10:00:07 7 have to do when they go back into the jury room.

10:00:07 8 MR. LOWELL: It would be my request that you do
10:00:07 9 the jury instructions at one time in a continuous basis
10:00:07 10 after argument. I saw that in your materials somewhere,
10:00:08 11 that's what -- is there any good reason not, let the lawyers
10:00:08 12 talk and then you instruct them what the lawyers say
10:00:08 13 afterwards before we open our mouths or would it be better
10:00:08 14 afterwards after we argue?

10:00:08 15 THE COURT: Okay. Look, I'm fine with that.

10:00:08 16 MR. LOWELL: And then lastly, in terms of the
10:00:08 17 timing of the rest of the day, it might make sense depending
10:00:08 18 on how long they are for them to do theirs, there should be
10:00:08 19 a break. I don't want to be interrupted for a lunch break
10:00:08 20 for example, for closing, I don't know how all that's going
10:00:08 21 to play out time wise.

10:00:08 22 THE COURT: Let's figure out where we are.

10:00:08 23 MR. LOWELL: Thank you.

10:00:08 24 (End of side-bar.)

10:00:08 25 COURT CLERK: All rise.

10:00:08 1 (A brief recess was taken.)

10:28:31 2 COURTROOM DEPUTY: All rise.

10:28:34 3 THE COURT: All right. Bring the jury in.

10:28:47 4 (Jury entering the courtroom at 10:28 a.m.)

10:29:05 5 THE COURT: All right, everyone. Welcome back.

10:29:07 6 Please be seated.

10:29:08 7 All right. Members of the jury, I hope you

10:29:11 8 enjoyed your weekend. I have to ask you questions because

10:29:15 9 it wouldn't be morning if I didn't ask you these questions.

10:29:18 10 So, did anyone talk to anyone about this case or anyone

10:29:21 11 involved in this case over the weekend?

10:29:24 12 JURY: No.

10:29:24 13 THE COURT: All right. Did anyone try and talk

10:29:26 14 to you about this case or anyone involved in this case?

10:29:30 15 JURY: No.

10:29:31 16 THE COURT: All right. Were you present when

10:29:33 17 other people were talking about this case or anyone involved

10:29:36 18 in this case?

10:29:37 19 JURY: No.

10:29:38 20 THE COURT: Did you read anything about this

10:29:40 21 case?

10:29:41 22 JURY: No.

10:29:42 23 THE COURT: Well, watch anything on TV, listen

10:29:45 24 to anything on the radio, the internet or podcasts or

10:29:48 25 whatever?

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10:29:49 1 JURY: No.

10:29:49 2 THE COURT: All right. And did you do any
10:29:51 3 research on this case?

10:29:53 4 JURY: No.

10:29:53 5 THE COURT: All right. Thank you so much.
10:29:56 6 We're in the home stretch here.

10:29:59 7 Mr. Lowell.

10:30:01 8 MR. LOWELL: Thank you, Your Honor. Good
10:30:03 9 morning, ladies and gentlemen.

10:30:04 10 On the completion of what we did on Friday,
10:30:13 11 Mr. Biden rests his case with the admission of that exhibit.
10:30:17 12 And we renew our previous motion.

10:30:20 13 THE COURT: All right. Thank you very much. I
10:30:22 14 will reserve on that.

10:30:24 15 Mr. Hines, anything from the government?

10:30:26 16 MR. HINES: Yes. In rebuttal, Your Honor, the
10:30:29 17 United States calls Special Agent Erika Jensen.

10:30:36 18 THE COURT: Special Agent Jensen, I'll just
10:30:38 19 remind you you're still under oath.

10:30:45 20 THE WITNESS: Yes.

10:30:46 21 DIRECT EXAMINATION

10:30:46 22 BY MR. HINES:

10:30:48 23 Q. Agent Jensen, Naomi Biden testified on Friday,
10:30:51 24 correct?

10:30:51 25 A. Yes.

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10:30:51 1 Q. And during her testimony, was she asked when the
10:30:56 2 defendant drove a truck up, if she recalled about what day
10:30:59 3 it was in October, was that October 15th?

10:31:02 4 MR. LOWELL: Objection, Your Honor, it misstates
10:31:04 5 the evidence, it was that he drove the Cadillac up.

10:31:09 6 MR. HINES: Rephrase.

10:31:11 7 BY MR. HINES:

10:31:11 8 Q. Was Ms. Biden asked when he drove it up, do you
10:31:15 9 recall about what day it was in October, was it
10:31:18 10 October 15th?

10:31:19 11 A. Yes.

10:31:19 12 Q. And did Ms. Biden answer, "yeah"?

10:31:21 13 A. Yes.

10:31:22 14 Q. Over the course of the weekend, did you do anything
10:31:26 15 to investigate when, in fact, Mr. Biden was -- went up to
10:31:31 16 New York?

10:31:31 17 A. Yes. I took a look at both the banking data and the
10:31:35 18 extraction reports to see if I could get any further
10:31:39 19 information about where Mr. Biden was, in particular on
10:31:44 20 these days to try to frame out the sequence as best I could.

10:31:48 21 Q. Did your review of that data show that he was still
10:31:52 22 in Delaware on October 16th, 2018?

10:31:54 23 A. Yes.

10:31:55 24 Q. Specifically, did you identify information in the
10:31:58 25 back ups showing a 7-Eleven location that was associated

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10:32:04 1 with a photograph, movies, on his phone?

10:32:08 2 A. Yes.

10:32:09 3 Q. That 7-Eleven location, did you look for more
10:32:13 4 messages to corroborate whether in fact Mr. Biden went to
10:32:17 5 that 7-Eleven in that week prior?

10:32:18 6 A. Yes.

10:32:19 7 Q. Did you prepare a summary chart limited to that sort
10:32:22 8 of information during that week prior to his trip to New
10:32:29 9 York and his trip to New York?

10:32:30 10 A. Yes.

10:32:31 11 Q. Is that summary chart Government's Exhibit 125A?

10:32:43 12 A. Yes.

10:32:44 13 MR. HINES: Move for the admission of 125A.

10:32:47 14 THE COURT: No further.

10:32:48 15 MR. LOWELL: No further.

10:32:49 16 THE COURT: All right. Thank you. It's
10:32:50 17 admitted.

10:32:51 18 (Government's Exhibit No. 125A was admitted into
10:32:52 19 evidence.)

10:32:52 20 BY MR. HINES:

10:32:53 21 Q. All right. So the first row we're going to look at
10:32:55 22 is actually Row 29 and 30, Ms. Vo on page 3, you can pull up
10:33:06 23 rows 29 and 30. What do rows 29 and 30 in the summary chart
10:33:12 24 show?

10:33:13 25 A. So this is pulled from one of the extraction reports

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10:33:18 1 and what it shows is there was, it was either a movie or an
10:33:24 2 image, it's something with the way Apple saved the data, but
10:33:28 3 it included location data, and the location if you would put
10:33:31 4 that 39.7 minus 75 in Google Maps, it will pull up a
10:33:36 5 location. And those locations when I put them in the map
10:33:39 6 came up as 7-Eleven, either right at or right next to the
10:33:44 7 7-Eleven in Wilmington at the corner of Lancaster and
10:33:49 8 Greenhill, I think.

10:33:50 9 Q. So just based on the fact that the movies depict that
10:33:54 10 location, can you tell definitively if the defendant was in
10:33:59 11 fact at that 7-Eleven at that time?

10:34:01 12 A. No.

10:34:01 13 Q. Did you look at other evidence to see whether the
10:34:05 14 defendant frequented that location prior to this date?

10:34:07 15 A. Yes.

10:34:08 16 Q. We're going to start at the beginning of the chart,
10:34:12 17 Row 1. Does page 1 include some of the messages showing
10:34:19 18 references to 7-Eleven?

10:34:20 19 A. Yes.

10:34:21 20 Q. What is the date of the first message that you pulled
10:34:25 21 on this exhibit?

10:34:26 22 A. The earliest message is dated October 9th, 2018.

10:34:30 23 Q. That's three days prior to the gun purchase, correct?

10:34:35 24 A. Yes.

10:34:35 25 Q. What is shown in the first row, can you please

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10:34:40 1 **describe that message?**

10:34:40 2 A. **Sure. So it's again, like the other summary chart**
10:34:44 3 **with the date, the time is actually UTC time, so it's a**
10:34:47 4 **little bit off by four hours, it shows a date and time, who**
10:34:51 5 **the message is from, the telephone number in this case, who**
10:34:54 6 **the message was to, and then what we are looking at when you**
10:34:58 7 **see the SMS, you're looking at the actual content from the**
10:35:02 8 **extraction report and that shows the very same thing, in the**
10:35:05 9 **very bottom is the contents of the message.**

10:35:07 10 Q. **And does the 302 number send a message to the**
10:35:11 11 **defendant?**

10:35:11 12 A. **Yes.**

10:35:12 13 Q. **And what does the message read?**

10:35:14 14 A. **It says, "hey, this junior the one you got that at**
10:35:18 15 **the 7-Eleven."**

10:35:20 16 Q. **Now the following day, does the defendant on**
10:35:24 17 **October 10th, 2018, write back to that 302 number?**

10:35:28 18 A. **Yes.**

10:35:29 19 Q. **And what does the defendant say?**

10:35:34 20 A. **So this message is from the defendant to that 302**
10:35:38 21 **number and it says "can you meet me at 7-Eleven now?"**

10:35:42 22 Q. **And then what is the following message on Row 6?**

10:35:47 23 A. **It's a response almost immediately saying "I BWT off**
10:35:53 24 **at 330."**

10:35:55 25 Q. **And then how does the defendant respond?**

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10:35:58 1 A. **Question mark.**

10:35:59 2 Q. **And then how does the 302 number reply?**

10:36:03 3 A. **"I have get off at 330 I can call you when I am on my**

10:36:09 4 **way."**

10:36:10 5 Q. **The time reference there to 3:30, I note the column**

10:36:17 6 **on the left says 4:49 p.m., what does 4:49 p.m. reflect?**

10:36:22 7 A. **That would be UTC time, so that would be four hours**

10:36:25 8 **later than eastern time for the time it was in Wilmington.**

10:36:28 9 **It would have been before 3:30 when he sent that message.**

10:36:32 10 Q. **Turning to Row 9, how does the defendant respond?**

10:36:36 11 A. **With a "K".**

10:36:39 12 Q. **And then how does the 30 number reply?**

10:36:44 13 A. **Almost at the exact same time, "IGHT".**

10:36:51 14 Q. **What does the 302 number say?**

10:36:53 15 A. **"You want the same."**

10:36:55 16 Q. **So this is October 10th, two days prior to the gun**

10:36:59 17 **purchase; correct?**

10:37:00 18 A. **Yes.**

10:37:01 19 Q. **Now the following day, October 11th, did you identify**

10:37:04 20 **another message with this same individual?**

10:37:07 21 A. **Yes.**

10:37:07 22 Q. **What does that message say?**

10:37:09 23 A. **It says "it's Q, I'm at 7-Eleven now."**

10:37:15 24 Q. **The 302 number, perhaps Q, is sending this to Hunter**

10:37:19 25 **Biden?**

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10:37:19 1 A. Yes.

10:37:20 2 Q. On this same day, October 11th, does the 302 number
10:37:25 3 send another message in Row 21?

10:37:27 4 A. Yes. Some number of hours later, eight hours later
10:37:33 5 or nine. It says "yo, it's Q (smiley face). Hoping my
10:37:39 6 texts reached you. Already lost cell. This number is a
10:37:44 7 contact number for me, feel free to hit me back...."

10:37:48 8 Q. So the 302 number in Row 13 and the 302 number in
10:37:52 9 number 21 are different numbers, correct?

10:37:54 10 A. Yes.

10:37:55 11 Q. But the person who is sending the message identifies
10:37:59 12 himself as Q in both messages, correct?

10:38:01 13 A. Yes.

10:38:01 14 Q. Turning to Row 23 on this same date, October 11th,
10:38:05 15 does the defendant respond to the 302 number that ends in
10:38:11 16 9246?

10:38:12 17 A. Yes.

10:38:13 18 Q. What does the defendant say?

10:38:15 19 A. "Meet me 7-Eleven at three."

10:38:18 20 Q. Again the time stamp is 6:41 p.m. How does that
10:38:22 21 correlate to what the actual time is that day?

10:38:25 22 A. So it would be four hours earlier. So it would be
10:38:30 23 4:03.

10:38:33 24 Q. The message would have been sent at 2:41 once you do
10:38:37 25 the conversion?

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10:38:38 1 A. Yes.

10:38:39 2 Q. Turning to Row 25, in the course of looking for
10:38:42 3 messages identifying 7-Eleven to see if the defendant
10:38:46 4 frequented that location, was there also a message that we
10:38:50 5 had utilized in your previous summary chart that referenced
10:38:53 6 7-Eleven?

10:38:54 7 A. Yes.

10:38:54 8 Q. And just for reference, what does that message say in
10:38:57 9 Row 25 and who is it sent by?

10:38:59 10 A. This message is sent by Mr. Biden to Hallie Biden, it
10:39:06 11 says "yes Bernard who hangs at 7-Eleven on Greenhill and
10:39:10 12 Lancaster. I'm now off MD Avenue behind Blue Rocks Stadium
10:39:15 13 waiting for a dealer named Mookie."

10:39:18 14 Q. So there are messages in which the defendant was
10:39:20 15 referencing 7-Eleven both before and now after the gun
10:39:24 16 purchase, is that right?

10:39:24 17 A. Yes.

10:39:25 18 Q. Turning to October 16th, did you find additional
10:39:34 19 messages in these next rows that show the defendant in
10:39:36 20 Delaware?

10:39:36 21 A. Yes.

10:39:37 22 Q. What does Row 26 say?

10:39:39 23 A. Row 26 is at, this now is the correct time, so the
10:39:45 24 bubble will have the UTC minus four, so this is 2:19 a.m.,
10:39:50 25 and it's from Mr. Biden to Hallie Biden on the 16th, it says

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10:39:55 1 "I'm almost there." And then maybe over an hour later,
10:40:00 2 there is a message again saying, "I'm here. Can't get in."
10:40:05 3 Q. Now turning to page 3, Row 28, did you identify
10:40:10 4 location information, which put him in the vicinity of
10:40:14 5 Hallie Biden's residence?
10:40:16 6 A. Yeah, this first one is at 4:16, it's the earliest
10:40:20 7 one I could find, it does show the location in the vicinity.
10:40:24 8 Q. And that's in the middle of the night at 4:16 a.m.;
10:40:28 9 correct?
10:40:28 10 A. At this point it's 4:16 a.m.
10:40:32 11 Q. Now turning to the next row, Row 29, from Ms. Biden's
10:40:38 12 house, where does the location information show that
10:40:43 13 Mr. Biden's phone went?
10:40:45 14 A. So, that changes at 5:05 a.m., with a different GPS
10:40:52 15 coordinate, so when I map those, it came up at a 7-Eleven.
10:40:58 16 Q. And turning to the next row, Row 30, is this
10:41:03 17 approximately seven minutes later, another movie that has a
10:41:08 18 geolocation information placing it at the 7-Eleven?
10:41:12 19 A. Yes.
10:41:13 20 Q. And that 7-Eleven is on Lancaster Avenue, correct?
10:41:19 21 A. Yes, that's the intersection of Lancaster and
10:41:23 22 Greenhill in Wilmington.
10:41:27 23 Q. Then does the defendant send a message in Row 32?
10:41:31 24 A. Yes.
10:41:32 25 Q. What does the message say and who is it sent to?

Jensen - direct - rebuttal

10:41:36 1 A. Mr. Biden sent a message to Hallie Biden saying "are
10:41:40 2 you up?"

10:41:42 3 Q. This is at approximately 5:41 in the morning?

10:41:45 4 A. Yes, correct.

10:41:45 5 Q. The next row, Row 33, what does Row 33 show?

10:41:49 6 A. This is a couple of more items of location data,
10:41:52 7 either an image or a movie file and they both indicated back
10:41:57 8 to her, the vicinity of her residence.

10:42:00 9 Q. So the testimony we heard Friday about October 15th,
10:42:03 10 in fact Mr. Biden was still in Delaware on October 16th, is
10:42:08 11 that right?

10:42:08 12 A. Yes, this data, along with financial data, indicated
10:42:12 13 that he was still in the greater Wilmington area.

10:42:15 14 Q. Now, rows 33 and 34 show he's in the vicinity of
10:42:21 15 Ms. Biden's residence in Greenville, Delaware, is that
10:42:25 16 correct?

10:42:25 17 A. Yes.

10:42:25 18 Q. Turning to Row 39, were you able to identify
10:42:28 19 information from the defendant's devices that showed when he
10:42:33 20 in fact went up to New York?

10:42:34 21 A. Yes, and again the data is a combination of both the
10:42:37 22 financial and the location data and other messages.

10:42:47 23 Q. What does Row 39 show?

10:42:48 24 A. So this is a location point when you map it, it comes
10:42:53 25 out to be 58th and Madison Avenue, New York at 1018, 12:36

Jensen - cross - rebuttal

10:43:04 1 p.m., that's adjacent to what's now the Midtown, Four
10:43:08 2 Seasons hotel is closed.

10:43:10 3 Q. What does the defendant say in Row 40?

10:43:14 4 A. So this is a little bit earlier in the day, it was
10:43:18 5 reversed chronologically, but room 810, Four Seasons.

10:43:24 6 Q. With respect to the 7-Eleven. With respect to the

10:43:27 7 7-Eleven that we identified in the summary chart, in his

10:43:32 8 book, did the defendant also reference meeting individuals

10:43:35 9 in front of 7-Eleven's?

10:43:37 10 A. Yes.

10:43:37 11 Q. Turning to Exhibit 19, page 208, directing your
10:43:43 12 attention to the final paragraph, does Mr. Biden state "no
10:43:48 13 dealer works off a user's urgent time table, so you arrange
10:43:53 14 to meet in front of a 7-Eleven on such and such street, and
10:43:57 15 then sit in your car and wait"?

10:43:58 16 A. Yes.

10:43:59 17 MR. HINES: No further questions, Your Honor.

10:44:01 18 THE COURT: Thank you. Cross-examine, rebuttal.

10:44:04 19 MR. LOWELL: Thank you.

10:44:05 20 CROSS-EXAMINATION

10:44:05 21 BY MR. LOWELL:

10:44:05 22 Q. Hello again. I wanted to start where he started.

10:44:11 23 He started by being asked a question about
10:44:13 24 whether Hunter's daughter, Naomi, had said when asked when
10:44:19 25 Hunter got to New York, it was quote "about" a date, and

Jensen - cross - rebuttal

10:44:22 1 then she said when I suggested the 15th, and she said

10:44:25 2 "yeah," right?

10:44:27 3 A. Yes.

10:44:27 4 Q. That's what she said. The date that you have figured
10:44:31 5 out that he got to New York was just two days later, is that
10:44:34 6 right?

10:44:34 7 A. I believe he went on the 17th.

10:44:35 8 Q. That would be two days later?

10:44:37 9 A. Yes.

10:44:38 10 Q. And I want to start therefore with the texts you
10:44:44 11 said, the first text, do we have the first three or can we
10:44:52 12 put it on the screen? Okay. You can leave it just like
10:44:53 13 that. So you started by trying to figure out when he got to
10:44:56 14 New York, right, and that was now we establish on the 17th?

10:44:59 15 A. Yes. That was a little broader than that, but
10:45:03 16 essentially in this whole period I was looking to see what I
10:45:06 17 could figure out timetable wise where he was.

10:45:10 18 Q. Got it. Okay. So you started by the 17th minus
10:45:15 19 eight, you started with October 9th, that's eight days prior
10:45:19 20 to when you just said he gets to New York; right, on the
10:45:22 21 ninth?

10:45:23 22 A. I looked at the bank statements first and I went back

10:45:27 23 --

10:45:27 24 Q. I'm sorry, I didn't mean -- sorry, I want to talk
10:45:32 25 about the same chart?

Jensen - cross - rebuttal

10:45:33 1 A. **Sure.**

10:45:33 2 Q. **So the chart says October 9th?**

10:45:35 3 A. **Yes, that's the earliest entry in the chart yes.**

10:45:38 4 Q. **So on the first one on the 9th at whatever time, it**
10:45:41 5 **says somebody is typing "hey, this is junior the one you**
10:45:44 6 **just identified at 7-Eleven," right?**

10:45:46 7 A. **Yes.**

10:45:47 8 Q. **To be clear, in Mr. Biden's book, or as you just**
10:45:52 9 **said, there were occasions where the book or other data**
10:45:55 10 **would indicate that he could be buying drugs at a 7-Eleven,**
10:45:58 11 **right?**

10:45:58 12 A. **He discussed that along with liquor stores and other**
10:46:01 13 **gas stations that he would yes, absolutely.**

10:46:03 14 Q. **Those are also in that same vicinity. There is a gas**
10:46:07 15 **station, there is a car wash, did you check for that?**

10:46:09 16 A. **I did, there is actually a gas station next door to**
10:46:12 17 **the 7-Eleven.**

10:46:13 18 Q. **So when you're talking about the 7-Eleven and its**
10:46:16 19 **location as you pointed out, there are other things right in**
10:46:18 20 **that vicinity?**

10:46:19 21 A. **Yes.**

10:46:19 22 Q. **And on occasion, you were asked by Mr. Hines to look**
10:46:25 23 **at the phone or look at the data and you were able to do**
10:46:29 24 **that and get a location and you did that because sometimes**
10:46:33 25 **there might be something that you could find, right, and you**

Jensen - cross - rebuttal

10:46:35 1 **were looking for that?**

10:46:36 2 A. **Yes.**

10:46:36 3 Q. **And notice on those first few when it says something**
10:46:39 4 **about the 7-Eleven, you have no location data to determine**
10:46:42 5 **if he was there or ever went, do you?**

10:46:44 6 A. **That's correct, I do not have any location data.**

10:46:47 7 Q. **And then you kept going and you said, again, this**
10:46:52 8 **person who is texting with him back and forth a few times,**
10:46:56 9 **that's on the next day again, the 10th, right?**

10:46:59 10 A. **Yes.**

10:47:00 11 Q. **And Mr. Hines asked you isn't that two days before he**
10:47:03 12 **purchased the gun at StarQuest, right?**

10:47:07 13 A. **Yes.**

10:47:08 14 Q. **So we know those two days exist, but you don't know**
10:47:11 15 **whether he met up with this person or whether this was an**
10:47:15 16 **exchange that never happened. Take a look?**

10:47:17 17 A. **Yes. From my interpretation I believe that it's**
10:47:21 18 **unclear.**

10:47:22 19 Q. **Indeed. And do you know as well that from your many**
10:47:26 20 **hours of investigation and doing what you did this weekend**
10:47:29 21 **that on the 11th -- I'm sorry, before we get there. Strike**
10:47:33 22 **that. Then we're on the 10th, I notice later you find**
10:47:37 23 **location data, but there is nothing on the 10th that you did**
10:47:40 24 **either, is there, that actually confirms where he is on the**
10:47:43 25 **10th?**

Jensen - cross - rebuttal

10:47:44 1 A. **Correct.**

10:47:46 2 Q. **And then I was saying that you then go the next day**
10:47:49 3 to the 11th on the chart that's the next day. Now, you did
10:47:55 4 a lot of investigation to figure out where he was, correct?

10:47:59 5 A. **As I stated, I looked through all the financial**
10:48:02 6 records and all the extraction records for anything I could
10:48:05 7 find.

10:48:05 8 Q. **On the 11th, you also know he went to Philadelphia**
10:48:09 9 where his daughter Finnegan lives?

10:48:11 10 A. **Yes, I do know that, in the evening I think.**

10:48:13 11 Q. **That's where he was headed that day and that's where**
10:48:15 12 he went, right?

10:48:16 13 A. **Yes.**

10:48:17 14 Q. **And then on the Row 23, again, this back and forth,**
10:48:21 15 and by the way, do you notice that when whoever is writing
10:48:25 16 him, there is often a text by that person, a text by that
10:48:28 17 person, and a text by that person, and then there could be
10:48:32 18 hours before Mr. Biden responds, right?

10:48:36 19 A. **There were definitely breaks in conversations, I**
10:48:40 20 can't tell you from memory because not every text is
10:48:43 21 depicted here what those breaks are.

10:48:45 22 Q. **I understand, but there were breaks for sure?**

10:48:48 23 A. **Yes.**

10:48:48 24 Q. **But then on the 23rd which is on the 11th, the day**
10:48:51 25 you know he went to Philadelphia depending on what we're

Jensen - cross - rebuttal

10:48:56 1 talking about, the time, 23 would be, if you did the
10:48:58 2 conversion, 2:41 in the afternoon, UTC is confusing?

10:49:05 3 A. Yes.

10:49:05 4 Q. And he writes "meet me at 7-Eleven at 3:00," do you
10:49:10 5 see that?

10:49:10 6 A. Yes.

10:49:10 7 Q. Now right there, right then, right time before --

10:49:16 8 where was the location data as to whether he ever went that
10:49:19 9 day, I didn't see it?

10:49:21 10 A. Yeah, I don't have it there.

10:49:23 11 Q. Okay. And then Mr. Hines asked you, 23 and 24 skips
10:49:29 12 two days later, right, now we're on the 13th, right?

10:49:32 13 A. Yes.

10:49:32 14 Q. And that would be after you went to Philadelphia and
10:49:36 15 came back then?

10:49:37 16 A. Yes. I don't know if he spent the night in
10:49:40 17 Philadelphia, but I do see a record that he went that
10:49:44 18 evening to meet his daughter.

10:49:45 19 Q. And then you were identifying texts with something
10:49:48 20 that said Q, do you remember that, a guy named Q or somebody
10:49:53 21 who identified themselves as Q, right?

10:49:55 22 A. Yes.

10:49:56 23 Q. In this exchange, prior, not a guy named Bernard,
10:50:02 24 right?

10:50:03 25 A. Correct, I do not see a reference.

Jensen - cross - rebuttal

10:50:05 1 Q. **Not a guy named Mookie, right?**

10:50:07 2 A. **No.**

10:50:08 3 Q. **And then as we're going down, we're on the 16th, on**

10:50:12 4 **rows 26 and 27, do you see that?**

10:50:14 5 A. **Yes.**

10:50:14 6 Q. **And in that, in the morning, I'm trying to decide if**

10:50:19 7 **it's UTC. Yeah. So on the 16th, Row 26, at 2:00 a.m. in**

10:50:26 8 **the morning, he's not texting to any of those people, he's**

10:50:30 9 **texting to Hallie Biden?**

10:50:32 10 A. **Yes.**

10:50:32 11 Q. **And asks "I'm almost there," right?**

10:50:35 12 A. **Yes.**

10:50:36 13 Q. **Do you know where he was coming from on the 16th to**

10:50:40 14 **say I'm almost there?**

10:50:41 15 A. **No.**

10:50:42 16 Q. **And then an hour later, I mean -- I'm sorry, do you**

10:50:49 17 **know -- I'm sorry to have asked this, I didn't ask that**

10:50:52 18 **right. You don't know if he was coming from right around**

10:50:54 19 **there or from a distance, Philadelphia or somewhere else,**

10:50:59 20 **when he says I'm almost there?**

10:51:01 21 A. **Correct.**

10:51:01 22 Q. **And then a long time -- well not a long time, an**

10:51:05 23 **hour-and-a-half passes and then the next text that says "I'm**

10:51:08 24 **here, can't get in." That's still to Hallie, right?**

10:51:12 25 A. **Yes.**

Jensen - cross - rebuttal

10:51:12 1 Q. And on Row 28, you could then have location data,
10:51:17 2 which indicated that he was actually in the vicinity of
10:51:22 3 where Ms. Biden and the house she owned with her ex-husband
10:51:26 4 and his -- or deceased husband and his brother lived, right?

10:51:31 5 A. Yeah, I believe it was the first location I found
10:51:33 6 that morning.

10:51:34 7 Q. So you know that he was there. And by the way, you
10:51:36 8 said you could do that by looking for videos or movies or
10:51:42 9 photos or texts, there are no movies during this period of
10:51:45 10 time with him and Q and Mookie or anybody, just what you
10:51:48 11 were able to find for the purposes of doing location data, I
10:51:51 12 don't see it presented here?

10:51:53 13 A. There were no movies that were in the data that I had
10:51:57 14 that could be played and there were thumbnail images
10:52:01 15 representative of some of the data points.

10:52:02 16 Q. I'm sorry, let me move on to the next time period,
10:52:05 17 the next time slot. So you can see that at 4:16 on Row 26,
10:52:12 18 Hallie Biden hasn't responded to him that hour in the early
10:52:17 19 morning hours at that point, right, when he's asked "I'm
10:52:20 20 here and can't get in," right?

10:52:22 21 A. Yes. 3:55 a.m., "I'm here, can't get in."

10:52:26 22 Q. Right. So at that hour at four something in the
10:52:29 23 morning, five in the morning, you then have him going back
10:52:32 24 to the 7-Eleven at 5 o'clock in the morning, right?

10:52:38 25 A. Yes.

Jensen - cross - rebuttal

10:52:38 1 Q. **Row 29?**

10:52:39 2 A. **But as far as the 16th, I think that's the first time**

10:52:43 3 **I have location data at the 7-Eleven on the 16th.**

10:52:47 4 Q. **So when you have indicated that he said I can't get**

10:52:50 5 **in, the location data has him going back to the 7-Eleven at**

10:52:57 6 **5:00 a.m. in the morning?**

10:52:59 7 A. **Right.**

10:52:59 8 Q. **Was he going there to meet Q or get a cup of coffee**

10:53:04 9 **before Hallie wrote him back?**

10:53:06 10 A. **I don't know.**

10:53:06 11 Q. **And then at -- he's still at the 7-Eleven according**

10:53:11 12 **to your chart, and then not even 30 minutes later, Row 32,**

10:53:15 13 **he asked, "are you up?" Right?**

10:53:20 14 A. **Yes.**

10:53:20 15 Q. **Still apparently waiting for her to be up, if he**

10:53:25 16 **wrote "are you up," it would generally indicate that he has**

10:53:27 17 **not responded and he's still waiting?**

10:53:29 18 A. **Yes, my interpretation was that he had not been able**

10:53:33 19 **to get a hold of her.**

10:53:34 20 Q. **And then he was -- he wrote that you say at the**

10:53:38 21 **7-Eleven?**

10:53:39 22 A. **Well, the --**

10:53:40 23 Q. **I'm sorry, the time stamp before on 30?**

10:53:43 24 A. **It was closer in the time that he was already back at**

10:53:47 25 **the residence than when he was at -- this does not indicate**

Jensen - cross - rebuttal

10:53:51 1 **every location.**

10:53:52 2 Q. **If you're putting together a sequence from every**
10:53:55 3 **point in the morning and he's writing the person he was**
10:53:58 4 **involved with at various times, if you look at this, it's**
10:54:01 5 **the hours in the early morning hours and "are you up", and**
10:54:04 6 **he was waiting, according to your location, at the 7-Eleven?**

10:54:07 7 A. **I think he goes, he can't get in, I think he leaves**
10:54:10 8 **and then he comes back over some time and tries again.**

10:54:14 9 Q. **As I said to you, when he's at the 7-Eleven, you see**
10:54:17 10 **no reference to anybody back and forth other than with**
10:54:21 11 **Hallie Biden?**

10:54:22 12 A. **Correct.**

10:54:22 13 Q. **And I think I asked this, but if not, I will, so at**
10:54:26 14 **that early morning hour when he goes back to the 7-Eleven,**
10:54:30 15 **you don't know whether it was for a donut, a coffee, I don't**
10:54:33 16 **think anybody eats a slurpy at that point, but you don't**
10:54:37 17 **know?**

10:54:37 18 A. **No, I have no further context.**

10:54:39 19 Q. **And then we get to when Mr. Biden actually got to New**
10:54:42 20 **York, which you were looking at line 39, and that is on the**
10:54:48 21 **18th; right, do you see that?**

10:54:52 22 A. **Yes.**

10:54:53 23 Q. **And Naomi, his daughter actually said the 18th was a**
10:55:00 24 **time that Hunter was in New York where he was; right?**

10:55:05 25 A. **I don't recall her testimony specifically but I think**

Jensen - cross - rebuttal

10:55:08 1 **that's reasonable that at this point he was in New York and**
10:55:12 2 **she would have thought that.**

10:55:13 3 Q. **There is nothing that she said that disagrees with**
10:55:16 4 **what you put on 39?**

10:55:19 5 A. **I don't believe so.**

10:55:20 6 Q. **And you have -- this is an example on 39 where you**
10:55:23 7 **have location data to confirm that, right?**

10:55:26 8 A. **Correct. In this case --**

10:55:28 9 Q. **Sorry, I didn't mean to cut you off. Please.**

10:55:31 10 A. **In this case, my purpose was just to figure out where**
10:55:34 11 **he was on each day, this is a location point I was able to**
10:55:38 12 **find that correlated with messages that indicated he was**
10:55:41 13 **where he was saying, he was in New York at The Four Seasons.**

10:55:44 14 Q. **Whereas in some other locations back and forth where**
10:55:48 15 **somebody says come to the 7-Eleven or don't come, or I'm**
10:55:51 16 **coming at 3:30, what I went over with you, you didn't find**
10:55:55 17 **that location data, did you?**

10:55:56 18 A. **Sometimes we have location data without text**
10:55:59 19 **messages, sometimes we have text messages without location**
10:56:02 20 **data.**

10:56:02 21 Q. **And then Row 40 after we established he's in New**
10:56:06 22 **York, and Naomi is in New York, and Naomi also mentioned**
10:56:09 23 **that she was there with her now husband Peter, right?**

10:56:14 24 A. **Yes.**

10:56:14 25 Q. **That's where he confirms he's staying at the Four**

10:56:18 1 Seasons and what room he's at?

10:56:19 2 A. Yes.

10:56:20 3 MR. LOWELL: Thank you, agent. No further
10:56:21 4 questions.

10:56:24 5 REDIRECT EXAMINATION

10:56:25 6 BY MR. HINES:

10:56:26 7 Q. Agent Jensen, we heard on Friday the testimony about
10:56:30 8 the defendant saying he was unreachable in New York. Do you
10:56:34 9 remember that testimony?

10:56:35 10 A. Yes.

10:56:35 11 Q. Just to be clear, Row 40, that's not a message to
10:56:40 12 Naomi Biden; correct?

10:56:42 13 A. No, it's a different individual.

10:56:45 14 MR. HINES: No further questions for this
10:56:47 15 witness, Your Honor.

10:56:48 16 At this time, the United States has no further
10:56:51 17 rebuttal, and we rest our case.

10:56:54 18 THE COURT: All right. Thank you.

10:56:55 19 Thank you, agent, you are excused.

10:56:59 20 All right. Let me see counsel up here for a
10:57:03 21 moment.

10:57:03 22 (Side-bar discussion:)

11:18:38 23 THE COURT: It's 11:00. How long is your
11:18:38 24 closing?

11:18:38 25 MR. WISE: Your Honor, I'm going to be giving

11:18:38 1 it. Our request is that you instruct now and they have
11:18:38 2 their lunch, they get refreshed after the instructions which
11:18:38 3 afternoon will be a little taxing and then we do the
11:18:38 4 closing. Looking at the length of the instructions, I think
11:18:39 5 we'll definitely be able to do that before we break for
11:18:39 6 lunch.

11:18:39 7 MR. LOWELL: My suggestion would be we still
11:18:39 8 stay with what I requested and give the instructions after
11:18:39 9 argument. We could let them go to an early lunch and start
11:18:39 10 after that and then just go through. I don't see -- I mean,
11:18:39 11 having a break and having lunch and then coming back, why
11:18:39 12 can't we do it that way, it would put it altogether with
11:18:39 13 argument and instructions and we'll get done by the end of
11:18:39 14 the day for sure.

11:18:39 15 THE COURT: How long do you think your closing
11:18:39 16 is going to be?

11:18:39 17 MR. WISE: At least an hour.

11:18:39 18 MR. LOWELL: About an hour.

11:18:39 19 THE COURT: I mean, what's the harm in me
11:18:39 20 instructing now, because it seems like it makes a good use
11:18:39 21 of time.

11:18:39 22 MR. WISE: I'm also -- I don't like arguing
11:18:39 23 before the instructions because I'm saying the Court will
11:18:39 24 instruct you and then you tell them they're supposed to
11:18:39 25 consider all the instructions, I think it's better.

11:18:39 1 THE COURT: I understand, but his preference --
11:18:39 2 your preference I take in into account like I take Mr.
11:18:39 3 Lowell's preference into account. I'm trying to do this --
11:18:39 4 I usually do it beforehand, but I was willing to do it the
11:18:39 5 way you asked except that I think we're wasting some time
11:18:39 6 here.

11:18:39 7 MR. LOWELL: Well, my view is what I said
11:18:39 8 before, which is the last thing the jury should hear is what
11:18:39 9 they're going to do with all they've heard and how they're
11:18:39 10 going to do it. You instruct now and many hours later
11:18:39 11 before they would hear your instructions, I would like them
11:18:39 12 to hear your instructions after we have done what we have
11:18:39 13 done. Counsel and I have always said Judge Noreika will say
11:18:39 14 or instruct and that's not a problem, it is still my
11:18:39 15 preference, I'm sure we can truncate to the lunch and we get
11:18:39 16 it all done in the afternoon.

11:18:40 17 THE COURT: I am going to instruct on the
11:18:40 18 substantive stuff now just to be, use this time efficiently.
11:18:40 19 Can we get the instructions?

11:18:40 20 MR. LOWELL: Do we have the new ones?

11:18:40 21 THE COURT: So I would stop before 22, after
11:18:40 22 closings we do this, and whatever comes last. Not here, but
11:18:40 23 we'll do whatever comes next.

11:18:40 24 MR. LOWELL: I'm sorry, Judge, I just didn't
11:18:40 25 follow you.

11:18:40 1 THE COURT: So I go up to 22 and I stop before
11:18:40 2 22.

11:18:40 3 MR. LOWELL: So it's just two instructions?

11:18:40 4 THE COURT: After the closing, three, because I
11:18:40 5 say, I did that extra one, don't take anything I say or do.
11:18:40 6 I was willing to defer but I just want to use time. Okay?

11:18:40 7 (End of side-bar.)

11:18:40 8 THE COURT: All right. So I am going to read
11:18:40 9 you most of the jury instructions up to you get to the point
11:18:40 10 that you do your deliberating, we are going to take a short
11:18:40 11 lunch, have your lunches brought in, and after lunch we'll
11:18:40 12 go right to the closing arguments, I'll finish up with the
11:18:40 13 instructions for deliberations, show you the verdict sheet,
11:18:40 14 and then you can begin your deliberations.

11:18:40 15 Okay. All right.

11:18:40 16 The defendant, Robert Hunter Biden -- you can
11:18:40 17 read along or listen, or whatever you prefer.

11:18:40 18 The defendant, Robert Hunter Biden, pleaded not
11:18:40 19 guilty to the offenses charged. He is presumed to be
11:18:40 20 innocent. He started the trial with a clean slate, with no
11:18:40 21 evidence against him. The presumption of evidence stays
11:18:40 22 with the defendant unless and until the government has
11:18:40 23 presented evidence that overcomes that presumption by
11:18:40 24 convincing you that the defendant is guilty of offenses
11:18:40 25 charged beyond a reasonable doubt. The presumption of

11:18:40 1 innocence requires you to find the defendant not guilty,
11:18:40 2 unless you are satisfied the government has proven guilt
11:18:40 3 beyond a reasonable doubt.

11:18:40 4 The presumption of innocence means the defendant
11:18:40 5 has no burden or obligation to present any evidence at all
11:18:40 6 or to prove that he is not guilty. The burden or obligation
11:18:40 7 of proof is on the government to prove the defendant is
11:18:40 8 guilty, and this burden stays with the government throughout
11:18:40 9 trial.

11:18:40 10 In order for you to find the defendant guilty of
11:18:40 11 the offenses charged, the government must convince you that
11:18:40 12 the defendant is guilty beyond a reasonable doubt. That
11:18:40 13 means the government must prove each and every element of
11:18:40 14 the offenses charged beyond a reasonable doubt. A defendant
11:18:40 15 may not be convicted based on suspicion or conjecture, but
11:18:41 16 only on evidence proving guilty beyond a reasonable doubt.

11:18:41 17 Proof beyond a reasonable doubt does not mean
11:18:41 18 proof beyond all possible doubts or to a mathematical
11:18:41 19 certainty. Possible doubts or doubts based on conjecture,
11:18:41 20 speculation, or hunch are not reasonable doubts. A
11:18:41 21 reasonable doubt is a fair doubt based on reason, logic,
11:18:41 22 common sense, or experience. It is a doubt that an ordinary
11:18:41 23 reasonable person has after carefully weighing all of the
11:18:41 24 evidence and is a doubt of the sort that would cause him or
11:18:41 25 her to hesitate to act in matters of importance in his or

11:18:41 1 her own life. It may arise from the evidence, or from the
11:18:41 2 lack of evidence, or from the nature of the evidence.

11:18:41 3 If, having now heard all the evidence, you are
11:18:41 4 convinced that the government proved each and every element
11:18:41 5 of the offense charged beyond a reasonable doubt, you should
11:18:41 6 return a verdict of guilty for that offense. However, if
11:18:41 7 you have a reasonable doubt about one or more of the
11:18:41 8 elements of the offense charged, then you must return a
11:18:41 9 verdict of not guilty for that offense.

11:18:41 10 You must make your decision in this case based
11:18:41 11 only on the evidence that you see and hear in this
11:18:41 12 courtroom. Do not let rumors, suspicions, or anything else
11:18:41 13 you may see or hear outside the Court influence your
11:18:41 14 decision in any way.

11:18:41 15 Let me remind you what the evidence from which
11:18:41 16 you are to find the facts consists of:

11:18:41 17 1. The testimony of the witnesses;
11:18:41 18 2. Documents and other things received as
11:18:41 19 exhibits;

11:18:41 20 3. Anything to which the parties have
11:18:41 21 stipulated or agreed, which we will address in a moment.

11:18:41 22 What is not evidence?

11:18:41 23 1. Statements and arguments of the lawyers are
11:18:41 24 not evidence. That includes opening statements and closing
11:18:41 25 arguments.

11:18:41 1 2. Questions by the lawyers are not evidence.

11:18:41 2 You should not assume that a fact is true just because one

11:18:42 3 of the lawyers or I ask a question about it. It's the

11:18:42 4 witness's answers that are evidence. Of course, you may

11:18:42 5 need to consider the questions to know what a witness means

11:18:42 6 by his or her answer. For example, if a witness answers yes

11:18:42 7 to a question, you will have to consider what the question

11:18:42 8 was to understand what the witness is saying.

11:18:42 11 4. Any testimony I struck or told to you
11:18:42 12 disregard is not evidence. .

11:18:42 13 5. Anything you may have seen or heard about
11:18:42 14 this case outside the courtroom is certainly not evidence.

11:18:42 15 You should use your common sense in weighing the
11:18:42 16 evidence. Consider it in light of your every day experience
11:18:42 17 with people and events and give it whatever weight you
11:18:42 18 believe it deserves. If your experience and common sense
11:18:42 19 tell you that certain evidence reasonably leads to a
11:18:42 20 conclusion, you may reach that conclusion.

11:18:42 21 Recall that I told you that the rules of
11:18:42 22 evidence control what can be received into evidence. When a
11:18:42 23 lawyer asks a question or offers an exhibit into evidence,
11:18:42 24 and a lawyer on the other side thinks that it is not
11:18:42 25 permitted by the rules of evidence, that lawyer may object.

11:18:42 1 An objection simply means that the lawyer is asking me to
11:18:42 2 decide whether the evidence should be allowed under the
11:18:42 3 rules.

11:18:42 4 Lawyers have a responsibility to their clients
11:18:42 5 to make objections when they think evidence is being offered
11:18:42 6 is improper under the rules of evidence, or improperly under
11:18:42 7 the rules every evidence. You should not be influenced by
11:18:42 8 the fact that an objection was made.

11:18:42 9 You should also not be influenced by my rulings
11:18:42 10 on objections to evidence. If I overruled an objection, the
11:18:42 11 question was answered or the exhibit was received as
11:18:42 12 evidence, and you should treat that testimony or exhibit
11:18:42 13 like any other.

11:18:42 14 If I sustained an objection, the question should
11:18:42 15 not be answered or the exhibit should not be received in
11:18:42 16 evidence. Whenever I sustained an objection, you were to
11:18:42 17 disregard the question or the exhibit entirely. Do not
11:18:42 18 think about or guess what the witness might have said as an
11:18:42 19 answer to a question. Do not think about or guess what the
11:18:42 20 exhibit might have shown. Sometimes a witness might have
11:18:42 21 already answered before a lawyer objected or before I ruled
11:18:42 22 on the objection. If I sustained the objection, you should
11:18:42 23 disregard the answer that was given.

11:18:42 24 Also, at certain points throughout the trial, I
11:18:42 25 may have ordered that some testimony or other evidence be

11:18:42 1 stricken or removed from the record. I instruct you if I
11:18:43 2 did that to disregard the testimony or evidence that was
11:18:43 3 stricken from the record, that means when you are deciding
11:18:43 4 this case, you must not be consider or be influenced in any
11:18:43 5 way by the testimony or other evidence that I told you to
11:18:43 6 disregard.

11:18:43 7 Certain charts and summaries were admitted as
11:18:43 8 evidence. You may use those charts and summaries as
11:18:43 9 evidence even though the underlying documents and records
11:18:43 10 have not been admitted into evidence.

11:18:43 11 The government and the Defendant have stipulated
11:18:43 12 or agreed that the following facts are true:

11:18:43 13 1. On October 12th, 2018, StarQuest Shooters
11:18:43 14 and Survival Supply, located in Wilmington, Delaware,
11:18:43 15 possessed a federal firearms license and was authorized to
11:18:43 16 deal in firearms under federal laws, therefore StarQuest
11:18:43 17 Shooters and Survival Supply was a "licensed dealer" as
11:18:43 18 defined in Title 18, of the United States Code, Section
11:18:43 19 921(a)(11).

11:18:43 20 2. The Colt Cobra 38SPL revolver with Serial
11:18:43 21 Number RA551363 is a "firearm" as defined in Title 18,
11:18:43 22 United States Code, Section 921(a)(3).

11:18:43 23 3. The frame of the Colt Cobra 38 Special
11:18:43 24 revolver with Serial Number RA551363 was manufactured in the
11:18:43 25 state of Massachusetts, and Colt's manufacturing company

11:18:43 1 assembled the frame and remaining components of the Colt
11:18:43 2 Cobra 38 Special revolver with Serial Number RA551363 at
11:18:43 3 their facility in the state of Connecticut. By virtue of
11:18:43 4 its presence in the State of Delaware, the Colt Cobra 38
11:18:43 5 Special revolver with Serial Number RA551363 traveled in
11:18:43 6 interstate commerce.

11:18:43 7 You should, therefore, treat these facts as
11:18:43 8 having been proved, you are not required to do so, however,
11:18:43 9 because you are the sole judges of the facts.

11:18:44 10 During the trial you heard testimony of
11:18:44 11 witnesses and argument by counsel that the government did
11:18:44 12 not use specific investigative techniques such as -- well
11:18:44 13 this one was not completely addressed, but in any event,
11:18:44 14 that's for us to fill in, so you can ignore that note. But
11:18:44 15 to the extent there was testimony that the government
11:18:44 16 suggested that this government should have used other
11:18:44 17 specific investigative techniques, that's what this is
11:18:44 18 about.

11:18:44 19 You may consider these facts in deciding whether
11:18:44 20 the government has met its burden of proof, because as I
11:18:44 21 told you, you should look at all the evidence or lack of
11:18:44 22 evidence in deciding whether the defendant is guilty.
11:18:44 23 However, there is no legal requirement that the government
11:18:44 24 use any of these specific investigative techniques or all
11:18:44 25 possible techniques to prove its case. There is no

11:18:44 1 requirement to -- again, that's our note to us, so you can
11:18:44 2 ignore that, there is no requirement to use any particular
11:18:44 3 investigative techniques.

11:18:44 4 Your concern, as I have said, is to determine
11:18:44 5 whether or not the evidence admitted in this trial proves
11:18:44 6 the defendant's guilt beyond a reasonable doubt.

11:18:44 7 The rules of evidence ordinarily do not permit
11:18:44 8 witnesses to state their own opinions about important
11:18:44 9 questions in a trial, but there are exceptions to these
11:18:44 10 rules.

11:18:44 11 In this case, you heard testimony from experts.
11:18:44 12 Because of their knowledge, skill, expert experience,
11:18:44 13 training, or education in their respective fields, experts
11:18:44 14 were permitted to offer opinions in that field and the
11:18:44 15 reasons for those opinions.

11:18:44 16 The opinion of these witnesses -- the opinion
11:18:44 17 these witnesses state should receive whatever weight you
11:18:44 18 think appropriate, given all the other evidence in the case.
11:18:44 19 In weighing this opinion testimony you may consider the
11:18:44 20 witness's qualifications, the reasons for the witness's
11:18:44 21 opinions, and the reliability of the information supporting
11:18:44 22 the opinions, as well as the other factors discussed in
11:18:45 23 these instructions for weighing the testimony of witnesses.

11:18:45 24 You may disregard the opinions entirely if you decide their
11:18:45 25 opinions are not based on sufficient knowledge, skill,

11:18:45 1 experience, training, or education. You may also disregard
11:18:45 2 the opinions if you conclude that the reasons given in
11:18:45 3 support of the opinions are not sound, or if you conclude
11:18:45 4 that the opinions are not supported by the facts shown by
11:18:45 5 the evidence, or if you think that the opinions are out
11:18:45 6 weighed by other evidence.

11:18:45 7 You have heard evidence that Hallie Biden and
11:18:45 8 Zoe Kestan have received a promise from the government that
11:18:45 9 their testimony will not be used against them in a criminal
11:18:45 10 case.

11:18:45 11 Their testimony was received into evidence and
11:18:45 12 may be considered by you. The government is permitted to
11:18:45 13 present testimony of someone who has received immunity in
11:18:45 14 exchange for their testimony, but you should consider the
11:18:45 15 testimony with great care and caution. In evaluating that
11:18:45 16 testimony, you should consider this factor along with the
11:18:45 17 others I have called to your attention. Whether or not
11:18:45 18 their testimony may have been influenced by the government's
11:18:45 19 promise is for you to determine. You may give their
11:18:45 20 testimony such weight as you think it deserves.

11:18:45 21 The defendant did not testify in this case. A
11:18:45 22 defendant has an absolute constitutional right not to
11:18:45 23 testify. The burden of proof remains with the prosecution
11:18:45 24 throughout the entire trial and never shifts to the
11:18:45 25 defendant. The defendant is never required to prove that

11:18:45 1 he's innocent. You must not attach any significance to the
11:18:45 2 fact that the defendant did not testify. You must not draw
11:18:45 3 any adverse inference against him because he did not take
11:18:45 4 the witness stand. Do not consider, for any reason at all,
11:18:45 5 the fact that the defendant did not testify. Do not discuss
11:18:45 6 that fact during your deliberations or let it influence your
11:18:45 7 decision in any way.

11:18:45 8 Count One charges that the defendant knowingly
11:18:45 9 made a false statement in the purchase of a firearm, in
11:18:45 10 violation of Title 18 of the United States Code,
11:18:45 11 Section 922(a)(6).

11:18:45 12 To find the defendant guilty of this offense,
11:18:45 13 you must find that the government proved each of the
11:18:45 14 following four elements beyond a reasonable doubt:

11:18:45 15 First. The seller was a licensed dealer;

11:18:45 16 Second. That the defendant made a false
11:18:45 17 statement while acquiring a firearm from the seller;

11:18:45 18 Third. That the defendant knew the statement
11:18:45 19 was false;

11:18:45 20 And fourth, that the false statement was
11:18:45 21 intended or likely to deceive the seller with respect to any
11:18:46 22 fact material to the lawfulness of the sale of the firearm.

11:18:46 23 A statement is false if it was untrue when made.

11:18:46 24 The term "firearm" means any weapon which will
11:18:46 25 expel, or is designed to or may readily be converted to

11:18:46 1 expel, a projectile by the action of an explosive.

11:18:46 2 A "dealer" -- a dealer for this in terms of
11:18:46 3 firearms dealers, a dealer is any person engaged in the
11:18:46 4 business of selling firearms at wholesale or retail.

11:18:46 5 The term "licensed dealer" means any dealer who
11:18:46 6 is licensed under the provisions of the Gun Control Act of
11:18:46 7 1968.

11:18:46 8 As I mentioned before when I talked about the
11:18:46 9 stipulations, the parties have stipulated and agreed that
11:18:46 10 StarQuest Shooters and Survival Supply was a "licensed
11:18:46 11 dealer". You should therefore treat this fact as having
11:18:46 12 been proved, though you are not required to do so because
11:18:46 13 you are the sole judges of the facts.

11:18:46 14 A material fact is one which would reasonably be
11:18:46 15 expected to be of concern to a reasonable and prudent person
11:18:46 16 in connection with the sale of the firearm. In determining
11:18:46 17 whether a fact was material to the lawfulness of the sale of
11:18:46 18 the firearm, you may consider that the law prohibits any
11:18:46 19 person who is an unlawful user or addicted to any controlled
11:18:46 20 substance from purchasing or possessing any firearm.

11:18:46 21 Count Two charges that the defendant made a
11:18:46 22 false statement related to information required to be kept
11:18:46 23 by law by a federal firearms licensed dealer, in violation
11:18:46 24 of Title 18 of the United States Code, Section 924(a)(1)(A).

11:18:46 25 To find the defendant guilty of this offense,

11:18:46 1 you must find that the government proved each of the
11:18:46 2 following four elements beyond a reasonable doubt:

11:18:46 3 First. The defendant knowingly made a statement
11:18:46 4 or representation in an ATF Form 4473;

11:18:46 5 Second. The defendant made the statement or
11:18:46 6 representation to a federally licensed firearms dealer;

11:18:46 7 Third. The statement or representation was
11:18:46 8 false; and

11:18:46 9 Fourth. The defendant knew the statement or
11:18:46 10 representation was untrue when he made the statement or
11:18:47 11 representation.

11:18:47 12 As I told you for Count One, a statement is
11:18:47 13 "false" if it was untrue when it was made.

11:18:47 14 Knowingly. A person acts knowingly if that
11:18:47 15 person acts voluntarily and intentionally and not because of
11:18:47 16 a mistake or accident or any innocent reason. This means
11:18:47 17 that the government must prove beyond a reasonable doubt
11:18:47 18 that the defendant was conscious and aware of the nature of
11:18:47 19 his actions and of the surrounding facts and circumstances,
11:18:47 20 as specified in the definition of the offenses charged.

11:18:47 21 In deciding whether the defendant acted
11:18:47 22 "knowingly" you may consider evidence about what the
11:18:47 23 defendant said, what the defendant did, and failed to do,
11:18:47 24 how the defendant acted, and all the other facts and
11:18:47 25 circumstances shown by the evidence that may prove what was

11:18:47 1 in the defendant's mind at the time.

11:18:47 2 Count Three. Count Three charges the defendant,
11:18:47 3 knowing that he was an unlawful user of a controlled
11:18:47 4 substance, or addicted to a controlled substance, did
11:18:47 5 knowingly possess a firearm in violation of Title 18, United
11:18:47 6 States Code, Section 922(g)(3).

11:18:47 7 To find the defendant guilty of this offense,
11:18:47 8 you must find that the government proved each of the
11:18:47 9 following four elements beyond a reasonable doubt".

11:18:47 10 First. The defendant was an unlawful user of a
11:18:47 11 controlled substance or addicted to a controlled substance;

11:18:47 12 Second, the defendant knowingly possessed a
11:18:47 13 firearm, that is a Colt Cobra .38 SPL revolver with Serial
11:18:47 14 Number RA551363, while he was an unlawful user of a
11:18:48 15 controlled substance or addicted to a controlled substance;

11:18:48 16 Third. At the time the defendant knowingly
11:18:48 17 possessed the firearm, he knew he was an unlawful user of a
11:18:48 18 controlled substance or addicted to a controlled substance.

11:18:48 19 And fourth. The firearm was transported across
11:18:48 20 a state line at some time during or before the defendant's
11:18:48 21 possession of it.

11:18:48 22 The term "firearm" has the same definition as
11:18:48 23 previously provided that these instructions.

11:18:48 24 You are instructed that crack cocaine, commonly
11:18:48 25 referred to as crack, is a controlled substance.

11:18:48 1 You are also instructed that as to the fourth
11:18:48 2 element, that the "firearm was transported across a state
11:18:48 3 line at some time during or before the defendant's
11:18:48 4 possession of it." The parties have agreed that the Colt
11:18:48 5 Cobra .38 SPL revolver with Serial RA551363 traveled in
11:18:48 6 interstate commerce, and that this element is met. You
11:18:48 7 should therefore treat this fact as having been proved, but
11:18:48 8 you are not required to do so, because you are the sole
11:18:48 9 judge of the facts.

11:18:48 10 The phrase "unlawful user of a controlled
11:18:48 11 substance" means a person who uses a controlled substance in
11:18:48 12 a manner other than as prescribed by a licensed physician.
11:18:48 13 The defendant must have been actively engaged in use of a
11:18:48 14 controlled substance or controlled substances during the
11:18:48 15 time he possessed the firearm, but the law does not require
11:18:50 16 that he used the controlled substances or -- controlled
11:18:54 17 substance or controlled substances at the precise time he
11:18:58 18 possessed the firearm. Such use is not limited to the use
11:19:01 19 of drugs on a particular day, or within a matter of days or
11:19:05 20 weeks before, but rather that the unlawful use has occurred
11:19:08 21 recently enough to indicate that the individual is actively
11:19:12 22 engaged in such conduct.

11:19:14 23 An inference that a person was a user of a
11:19:18 24 controlled substance may be drawn from evidence of a pattern
11:19:21 25 of use or possession of a controlled substance that

11:19:25 1 reasonably covers the time that the firearm was possessed.

11:19:27 2 The term "addict" means any individual who
11:19:32 3 habitually uses any controlled substance so as to endanger
11:19:33 4 the public morals, health, safety, or welfare, or who is so
11:19:36 5 far addicted to the use of the controlled substance as to
11:19:39 6 have lost the power of self control with reference to his
11:19:43 7 addiction.

11:19:44 8 To establish the second element of Count Three,
11:19:50 9 the government must prove that the defendant possessed the
11:19:53 10 firearm in question. To "possess" means to have something
11:19:55 11 within a person's control. The government does not have to
11:19:59 12 prove that the defendant physically held the firearm, that
11:20:02 13 is, he had actual possession of it. As long as the firearm
11:20:05 14 was within the defendant's control, he possessed it. If you
11:20:09 15 find that the defendant either had actual possession of the
11:20:12 16 firearm or had power and intention to exercise control over
11:20:17 17 it, even though it was not in the defendant's physical
11:20:20 18 possession, that is, that the defendant had the ability to
11:20:22 19 take actual possession of the object when the defendant
11:20:26 20 wanted to do so, you may find that the government has proven
11:20:29 21 possession.

11:20:30 22 Possession may be momentary or fleeting.

11:20:33 23 The law also recognizes that possession may be
11:20:36 24 sole or joint. If one person alone possesses the firearm,
11:20:40 25 that is sole possession. However, more than one person may

11:20:44 1 have the power and intention to exercise control over a
11:20:44 2 firearm. This is called joint possession.

11:20:46 3 If you find that the defendant had power and
11:20:50 4 intention, then he possessed the firearm even if he
11:20:53 5 possessed it jointly with another.

11:20:55 6 Proof of ownership of the firearm is not
11:20:58 7 required.

11:20:59 8 The government must prove that the defendant
11:21:01 9 knowingly possessed the firearm described in the indictment.
11:21:05 10 This means that the defendant possessed the firearm
11:21:07 11 purposely and voluntarily, and not by accident or mistake.
11:21:10 12 It also means that defendant knew the object was a firearm.

11:21:13 13 The indictment charges the defendant with being
11:21:19 14 an unlawful user of a controlled substance or addicted to a
11:21:24 15 controlled substance. The government is not required to
11:21:27 16 prove both, that he was an unlawful user of a controlled
11:21:30 17 substance, and also addicted to a controlled substance. It
11:21:34 18 is sufficient for the government to prove, beyond a
11:21:36 19 reasonable doubt, that he was either an unlawful user of a
11:21:41 20 controlled substance or addicted to a controlled substance.

11:21:44 21 Each of you have must agree with the other
11:21:47 22 jurors as to whether the defendant was an unlawful user of a
11:21:51 23 controlled substance, or was addicted to controlled
11:21:54 24 substances, or both. If you unanimously agree that he was
11:21:59 25 either an unlawful user of a controlled substance, or was

11:22:02 1 addicted to a controlled substance, or was both, and met the
11:22:07 2 other elements as to the offense, you may find the defendant
11:22:10 3 guilty of that offense.

11:22:13 4 Unless each of you agree that the government has
11:22:17 5 proven that he was either an unlawful user of a controlled
11:22:20 6 substance or he was addicted to a controlled substance, then
11:22:24 7 you must find the defendant not guilty.

11:22:26 8 The fourth element listed in Instruction number
11:22:33 9 18, let's just make sure that's right. It isn't. It is, if
11:22:53 10 you can correct that, it should be, the fourth element
11:22:57 11 listed in instruction number 15. The fourth element listed
11:23:04 12 in instruction number 15 that the government must prove
11:23:08 13 beyond a reasonable doubt is that the firearm specified in
11:23:19 14 the indictment had at some time traveled in interstate
11:23:23 15 commerce.

11:23:24 16 I already told you this before, but in this
11:23:26 17 case, the parties have agreed that the Colt Cobra 38SPL
11:23:29 18 revolver with Serial Number RA551363 traveled in interstate
11:23:34 19 commerce. You should therefore treat this fact as having
11:23:37 20 been proven. Though you are not required to do so given
11:23:42 21 your role as the sole judge of facts.

11:23:46 22 Remember that you are here only to determine
11:23:48 23 whether the defendant is guilty or not guilty of the charges
11:23:51 24 in the indictment. The defendant is not on trial for any
11:23:54 25 conduct or offense not charged in the indictment.

11:23:57 1 So that is the end of the substantive
11:24:01 2 instructions. And after closing arguments, I'll give you
11:24:05 3 the other instructions on the foreperson and your
11:24:08 4 deliberations.

11:24:09 5 But for now, what we are going to do is take a
11:24:13 6 break. It's 11:24. Let's come back at about 12:05, and
11:24:18 7 we'll start with the closing arguments.

11:24:21 8 COURTROOM DEPUTY: All rise.

11:24:23 9 (Jury exiting the courtroom at 11:24 a.m.)

11:24:52 10 THE COURT: All right. Anything we need to
11:24:56 11 address?

11:24:56 12 MR. HINES: No, Your Honor.

11:24:57 13 MR. LOWELL: No.

11:25:11 14 (A luncheon recess was taken.)

12:12:32 15 COURTROOM DEPUTY: All rise.

12:12:42 16 (Jury entering the courtroom at 12:12 p.m.)

12:12:55 17 THE COURT: All right, everyone. Welcome back.
12:13:08 18 Everyone else can please be seated.

12:13:10 19 Mr. Wise.

12:13:15 20 MR. WISE: All of this is not evidence. The
12:13:44 21 people sitting in the gallery are not evidence. You may
12:13:48 22 recognize some of them from the news or from the community.
12:13:54 23 In the course of this trial, you may have looked at them and
12:13:58 24 they may have looked at you. You may have seen them
12:14:02 25 reacting to the testimony or the photographs, or something

12:14:06 1 that one of the lawyers said. But respectfully, none of
12:14:12 2 that matters. The only evidence in this case is what came
12:14:19 3 from the witness stand and the physical and documentary
12:14:24 4 evidence that has been admitted by Judge Noreika.

12:14:29 5 And your decision can only be made based on
12:14:33 6 evidence and the law.

12:14:36 7 As Mr. Hines said in opening, no one is above
12:14:41 8 the law. And this case stands for that simple proposition.
12:14:48 9 Your responsibility to apply the law to the facts is the
12:14:52 10 same task that every jury faces in every courtroom in every
12:14:58 11 court house in America. It is no more important or less
12:15:04 12 important because of who the defendant is.

12:15:09 13 This afternoon, I will summarize the evidence
12:15:12 14 that has been presented to you in the course of this trial
12:15:15 15 and discuss how it establishes beyond a reasonable doubt
12:15:20 16 each of the elements of the three charges in this case.

12:15:28 17 These are the charges. The first two are false
12:15:36 18 statement charges. The third is a possession charge. Judge
12:15:40 19 Noreika has already instructed you on the law you are to
12:15:42 20 apply as to each of these charges. I will be discussing how
12:15:46 21 the facts establishes those elements. But obviously, what
12:15:52 22 Judge Noreika says is what matters.

12:15:55 23 So if I say anything that is in contradiction to
12:15:59 24 or contrast to what the Court has instructed you, you are to
12:16:03 25 follow the law as Her Honor gave it.

12:16:06 1 Now, there is overlap between the elements of
12:16:09 2 these offenses, although there are differences between each
12:16:14 3 count that I'll highlight. And as Her Honor instructed you,
12:16:20 4 the United States must prove each element of each offense
12:16:23 5 beyond a reasonable doubt. That is a burden we embrace and
12:16:27 6 a burden I submit we have met.

12:16:30 7 The parties have stipulated to a limited number
12:16:33 8 of facts which prove some but not all the elements of the
12:16:37 9 offenses beyond a reasonable doubt. And I submit that for
12:16:40 10 some of the other elements, even though the parties haven't
12:16:43 11 stipulated, the evidence is undisputed and proves those
12:16:47 12 statements beyond a reasonable doubt.

12:16:49 13 The central issue in this case is whether the
12:16:53 14 defendant was an unlawful user of, or addicted to a
12:16:57 15 controlled substance. And whether he knew that fact. And
12:17:01 16 as Her Honor instructed you, the United States doesn't have
12:17:05 17 to prove both. But I believe the evidence does.

12:17:10 18 Most of the time we have spent in this trial has
12:17:12 19 been introducing evidence of the defendant's drug use,
12:17:17 20 addiction, and his knowledge of it. In opening, Mr. Lowell
12:17:20 21 said the prosecutors plan to call witness after witness who
12:17:24 22 will tell you, and they plan to show you dozens of e-mails
12:17:27 23 or texts which reference what Hunter does not dispute. He
12:17:32 24 had abused alcohol since he was a teenager, and drugs as an
12:17:36 25 adult. The defendant does dispute it. He pleaded not

12:17:40 1 guilty to the charges, which is his right. And what
12:17:44 2 Mr. Lowell says isn't evidence. The fact that he said the
12:17:48 3 defendant doesn't dispute his drug use isn't a stipulation
12:17:52 4 to it. You heard Mr. Hines read the stipulations. They're
12:17:59 5 Exhibit 43. None of them are that the defendant admits he
12:18:03 6 used drugs as an adult. So the United States had to prove
12:18:06 7 it. And that's why we had to call witnesses, and show you
12:18:09 8 photographs and text messages, and play parts of the
12:18:13 9 nonfiction book that the defendant wrote and read. All of
12:18:20 10 which establishes, beyond a reasonable doubt, that the
12:18:23 11 defendant used crack and was addicted to crack, and that he
12:18:26 12 knew he used crack and was addicted to it during the
12:18:29 13 relevant time period.

12:18:31 14 To be clear the evidence was personal, it was
12:18:34 15 ugly, and it was overwhelming. It was also absolutely
12:18:40 16 necessary. There is no other way to prove the use of drugs
12:18:44 17 or addiction to drugs than through the kind of evidence that
12:18:49 18 you saw. And so this afternoon, I will spend most of my
12:18:53 19 time talking about the evidence that the defendant was a
12:18:55 20 user of or addicted to crack and that he knew it, and that
12:19:00 21 evidence applies to all three of these charges. And I'll
12:19:04 22 address that evidence once I have spoken to some of the
12:19:08 23 other elements that are not related to those facts.

12:19:15 24 To begin with, Her Honor instructed you on the
12:19:19 25 elements of Count 1, false statement in purchase of a

12:19:21 1 firearm. These are the elements, and I will go through each
12:19:25 2 of them in turn.

12:19:27 3 The first element is that the seller was a
12:19:29 4 licensed dealer. There is a stipulation that StarQuest was
12:19:33 5 a licensed dealer. So the first element is proved beyond a
12:19:37 6 reasonable doubt.

12:19:38 7 The second element of Count 1 is that the
12:19:41 8 defendant made a false statement while acquiring a firearm
12:19:45 9 from a seller. There is a stipulation that the Colt Cobra
12:19:50 10 38 SPL revolver that he purchased was a firearm, so that is
12:19:57 11 proved beyond a reasonable doubt.

12:19:59 12 This is the defendant's false statement. The no
12:20:07 13 answer to question 11E on the ATF Form 4473, which the
12:20:13 14 defendant made on October 12th, 2018 is the false statement
12:20:17 15 the defendant is charged with making.

12:20:21 16 I want to be very clear about that. This is the
12:20:23 17 statement that the evidence proves is false.

12:20:27 18 The defense called Jason Turner and Ronald
12:20:30 19 Palimere, two StarQuest Shooters employees who had nothing
12:20:34 20 to do with whether the defendant answered question 11E
12:20:38 21 falsely.

12:20:40 22 The defense elicited testimony about the form of
12:20:43 23 identification the defendant used, but that's irrelevant to
12:20:46 24 the charges in this case. The undisputed evidence is that
12:20:51 25 the defendant bought the gun regardless of what ID he gave

12:20:56 1 or didn't give. Again, to be clear, he is not charged with
12:21:01 2 giving a false address or trying to use a phony ID.

12:21:05 3 So to the extent Gordon Cleveland, the man who
12:21:10 4 sold him the gun, who was the only relevant witness from
12:21:14 5 StarQuest on the question of how the defendant answered
12:21:17 6 question 11E, and Jason Turner, the employee who ran the
12:21:21 7 background check, who was not present when the defendant
12:21:24 8 filled out Section A of the form, have different
12:21:27 9 recollections of who asked for secondary ID or whether a
12:21:30 10 secondary ID was provided is irrelevant.

12:21:35 11 Now, the evidence shows that this statement was
12:21:38 12 false because while the defendant checked no, that he wasn't
12:21:42 13 a user or addicted to a controlled substance, in fact he
12:21:48 14 was. And I will discuss that in some detail.

12:21:52 15 The third element is that the defendant knew
12:21:54 16 that that statement was false. In other words, he knew he
12:21:57 17 was a user of or addicted to crack cocaine when he filled
12:22:01 18 out that form. And again, I will address that evidence in
12:22:06 19 response -- in referring to all three of the counts where
12:22:09 20 that is the central issue.

12:22:11 21 And then the fourth element of Count 1 is that
12:22:14 22 the false statement was intended or likely to deceive the
12:22:17 23 seller with respect to any fact material to the lawfulness
12:22:22 24 of the sale of the firearm, and her Honor has instructed you
12:22:28 25 on what material means. And material means a fact which

12:22:32 1 would reasonably be expected to be of concern to a
12:22:36 2 reasonable and prudent person in connection with the sale of
12:22:39 3 the firearm. Whether the individual employees at StarQuest
12:22:46 4 thought the statement was material is not the question. And
12:22:49 5 the Court instructed you in determining whether a fact was
12:22:53 6 material to the lawfulness of the sale of the firearm, you
12:22:56 7 may consider that the law prohibits any person who was an
12:23:00 8 unlawful user or addicted to any control substance from
12:23:03 9 purchasing or possessing the firearm. The form itself, the
12:23:07 10 highlighted portion on the screen establishes that an answer
12:23:11 11 to question 11E is material, because if you answer yes, you
12:23:15 12 are prohibited from buying a firearm. In other words, the
12:23:19 13 answer matters, it is material.

12:23:22 14 Count 2 is another related false statement
12:23:26 15 offense, what was referred to as a record keeping offense,
12:23:30 16 an offense about the record that is kept by an FFL that
12:23:36 17 contained the false statement. And these are the elements.

12:23:40 18 Again, Count 1 and 2 charge that the defendant
12:23:44 19 made a false statement. And the difference is that Count 1
12:23:48 20 requires that the statement be material, but it doesn't have
12:23:52 21 to be made on any particular government form. Count 2
12:23:56 22 doesn't require the United States to prove that the
12:23:59 23 statement was material, but it does require that the
12:24:03 24 statement be on a particular form, specifically an ATF
12:24:10 25 Form 4473. The first element of Count 2 is that the

12:24:13 1 defendant knowingly made a statement or representation in an
12:24:18 2 ATF Form 4473. And Exhibit 10(a) is the ATF Form 4473 that
12:24:25 3 the defendant filled out.

12:24:27 4 The undisputed evidence is that he did fill
12:24:32 5 question 11E, Gordon Cleveland testified to that, and there
12:24:37 6 is nothing to the contrary. I will return to the evidence
12:24:41 7 that the statement was false, and he knew it was false after
12:24:43 8 I discuss the other element of Count 2 and Count 3. Second,
12:24:48 9 the defendant made the statement or representation to a
12:24:51 10 federally licensed firearms dealer. Again the parties have
12:24:55 11 stipulated that StarQuest was a licensed dealer, so Count 2,
12:25:01 12 element 2 of Count 2, like element 1 of Count 1, is proof
12:25:06 13 beyond a reasonable doubt.

12:25:07 14 Third, the statement or representation was
12:25:12 15 false, and fourth, the defendant knew the statement or
12:25:14 16 representation was untrue when he made the statement or
12:25:16 17 representation, and a statement is false if it was untrue
12:25:22 18 when it was made. I will establish the evidence of that at
12:25:27 19 the conclusion of reviewing the elements of all three
12:25:30 20 offenses. Count 3 charges the defendant of violating the
12:25:35 21 law that makes it a crime for a drug user or a drug addicted
12:25:39 22 to possess a firearm. These are the elements. Count 3 is a
12:25:43 23 possession offense, it's different from Count 1 and 2
12:25:48 24 because it makes it unlawful to possess a firearm if you are
12:25:51 25 a user or addicted to do a controlled substance. It doesn't

12:25:55 1 require the government to prove the defendant made a false
12:25:58 2 statement. It doesn't have anything to do with a federally
12:26:02 3 licensed firearm dealer or the purchase of a gun. In fact,
12:26:05 4 a defendant who stole a gun or acquired it illegally could
12:26:09 5 be guilty of this crime. In other words, unlike Count 1 and
12:26:14 6 2, which is all about how a defendant tries to acquire a gun
12:26:18 7 by making false statements, how a defendant acquires a gun
12:26:23 8 is irrelevant to Count 3. But Count 3 does require that the
12:26:29 9 government prove that the defendant possessed a firearm.
12:26:31 10 The important overlap between all three charges is that the
12:26:35 11 United States must prove the defendant was an unlawful user
12:26:38 12 of or addicted to a controlled substance and that he knew
12:26:41 13 it. The first element of Count 3 was that the defendant was
12:26:44 14 an unlawful user of a controlled substance or addicted to
12:26:47 15 it. Second, that the defendant knowingly possessed a
12:26:50 16 firearm, that is a Colt Cobra 38 SPL revolver with that
12:26:55 17 serial number, while he was an unlawful user of a controlled
12:26:59 18 substance or addicted to a controlled substance. The
12:27:06 19 evidence establishes beyond a reasonable doubt that the
12:27:09 20 defendant possessed this gun. You heard the testimony of
12:27:11 21 Gordon Cleveland that he sold the defendant the firearm.
12:27:15 22 You saw the receipt from StarQuest that shows the firearm
12:27:19 23 serial number. You heard testimony from Hallie Biden that
12:27:22 24 she found the firearm in the center console of the
12:27:26 25 defendant's truck on October 23rd, 2018. You saw messages

12:27:30 1 to Hallie Biden from the defendant where he admits the gun
12:27:30 2 was his. The serial number of the recovered gun we have in
12:27:35 3 testimony matches the serial number on the StarQuest
12:27:37 4 receipt. And the defendant made a statement to the police
12:27:41 5 that the gun was his. In fact, there was no evidence that
12:27:45 6 anyone else possessed the gun from October 12th to
12:27:50 7 October 23rd, other than the defendant.

12:27:51 8 Count 3 of -- element 3 of Count 3 is that at
12:27:57 9 the time the defendant knowingly possessed the firearm, he
12:28:00 10 knew he was an unlawful user of a controlled substance or
12:28:04 11 addicted to a controlled substance.

12:28:06 12 And I'll return to that as I said. In Count 4,
12:28:10 13 the firearm was transported across the state line at some
12:28:14 14 time during or before the defendant's possession of it. And
12:28:19 15 here there is a stipulation that the firearm traveled in
12:28:23 16 interstate commerce, so the fourth element of Count 3 is
12:28:26 17 proven beyond a reasonable doubt.

12:28:28 18 And so now I turn to, as I said is the central
12:28:34 19 issue in this case, and that is the evidence has established
12:28:37 20 beyond a reasonable doubt that the defendant was an unlawful
12:28:41 21 user of and addicted to a controlled substance when he
12:28:45 22 bought the gun on October 12th, 2018, during the period when
12:28:49 23 he possessed it from October 12th to October 23rd, and for
12:28:54 24 more than six months after. Judge Noreika has given you a
12:28:58 25 series of legal instructions that relate to this evidence.

12:29:02 1 The first was a definition of "knowing". And in opening,
12:29:06 2 Mr. Lowell said that knowingly is a very high state of mind.
12:29:13 3 Well the instruction says what it says about knowingly. It
12:29:17 4 means in sum that the defendant knew what he was doing. It
12:29:21 5 means he didn't use drugs by accident. That he didn't smoke
12:29:25 6 a cigarette laced with cocaine that someone gave him without
12:29:29 7 his knowledge.

12:29:30 8 He knew he was using drugs. That's what the
12:29:32 9 evidence shows. And he knew he was addicted to drugs,
12:29:35 10 that's what the evidence shows.

12:29:38 11 Maybe if he had never been to rehab, he could
12:29:41 12 argue that he didn't know he was an addict when he bought
12:29:44 13 the gun on October the 12th, but he had been to rehab over
12:29:48 14 and over again, and he kept going to rehab, which evidences
12:29:52 15 that he knew he was -- he had an addiction when he bought
12:29:57 16 and possessed the gun.

12:29:58 17 Maybe if he hadn't used crack for a long period
12:30:02 18 of time before he bought the gun he could claim he didn't
12:30:05 19 know he was an addict. But the evidence is he was using in
12:30:10 20 Malibu at the end of September, just two weeks before. And
12:30:14 21 as the instruction provides, the evidence that a defendant
12:30:18 22 acted knowingly includes what a defendant said, what a
12:30:22 23 defendant did and failed to do, how the defendant acted, and
12:30:26 24 all other facts and circumstances shown by the evidence that
12:30:29 25 may prove what was in the defendant's mind at the time. And

12:30:34 1 we have presented evidence in all of those categories.
12:30:37 2 We've presented evidence of what the defendant said at the
12:30:41 3 time in his messages, and shortly thereafter in his memoir,
12:30:45 4 what he did setting up drug purchases, talking about drug
12:30:49 5 use, talking about addiction with others, how he acted. You
12:30:53 6 heard testimony from witnesses about how he could present
12:30:56 7 himself even when he was using drugs in a coherent way, and
12:31:04 8 other facts and circumstances that I will summarize for you.

12:31:07 9 Now Judge Noreika also instructed you on what is
12:31:11 10 meant by an unlawful user of a controlled substance. And
12:31:17 11 the instruction she read, what the law says, is that the
12:31:24 12 phrase "unlawful user of a controlled substance means a
12:31:27 13 person who uses a controlled substance in a manner other
12:31:30 14 than as prescribed by a licensed physician." Of course
12:31:33 15 there is no evidence that the defendant was using anything
12:31:35 16 prescribed by a physician.

12:31:36 17 The defendant must have been actively engaged in
12:31:39 18 the use of a controlled substance or controlled substances
12:31:43 19 during the time he possessed the firearm. But the law does
12:31:46 20 not require that he used the controlled substance or
12:31:49 21 controlled substances at the precise time he possessed the
12:31:54 22 firearm. I want to be very clear about that. The United
12:32:02 23 States is not required to prove that the defendant used
12:32:05 24 drugs on October 12th when he bought the gun, Mr. Hines told
12:32:10 25 you that in opening, that's what the law is. Or at any time

12:32:16 1 between October 12th and October 23rd when he possessed it.

12:32:21 2 I'll repeat that as well.

12:32:23 3 The United States is not required to prove that
12:32:25 4 he used drugs from October 12th to October 23rd. And to
12:32:31 5 the extent Mr. Lowell said anything in his opening or will
12:32:35 6 say anything in closing or has given you the impression with
12:32:38 7 his questions that the government has to prove that the
12:32:41 8 defendant used drugs on October 12th or between October 12th
12:32:45 9 and 23rd, you should put that aside and follow Judge
12:32:49 10 Noreika's instructions.

12:32:51 11 And as the instruction continues, such use is
12:32:55 12 not limited to the use of drugs on a particular day, or
12:32:58 13 within a matter of days or weeks before, but rather that the
12:33:02 14 unlawful use has occurred recently enough to indicate that
12:33:05 15 the individual is actively engaged in such conduct.

12:33:11 16 So again, the United States is not required to
12:33:17 17 prove drug use on a particular day, whether it's
12:33:21 18 October 12th, or any day between October 12th and
12:33:24 19 October 23rd, or within a matter of days or weeks before
12:33:29 20 that period. In other words, there is no requirement that
12:33:32 21 the United States prove use in the month of October.
12:33:37 22 Nothing in the instructions tell you you are required to
12:33:41 23 find that he used in October.

12:33:44 24 Rather, the instructions say the -- rather that
12:33:50 25 the unlawful use has occurred recently enough to indicate

12:33:53 1 that the individual is actively engaged in such conduct.

12:33:57 2 And so the testimony from Zoe Kestan is the
12:34:01 3 defendant used in Malibu on September 23rd. That was a
12:34:06 4 little less than two weeks before the defendant bought his
12:34:10 5 gun. That is unlawful use that occurred recently enough to
12:34:26 6 indicate that the defendant is actively engaged in the use
12:34:30 7 of drugs when he bought and then possessed the gun. You
12:34:33 8 could convict on those facts alone.

12:34:37 9 Now, obviously there is evidence that he was
12:34:40 10 using in the month of October, which I will discuss in
12:34:43 11 detail after I summarize all the evidence that the defendant
12:34:46 12 was a user of or an addict, and that he knew it. But to be
12:34:51 13 clear, the evidence is not limited to October. And that is
12:34:56 14 because as the instruction provides, an inference that a
12:34:59 15 person was a user of a controlled substance may be drawn
12:35:02 16 from evidence of a pattern of use or possession of a
12:35:08 17 controlled substance that reasonably covers the time the
12:35:11 18 firearm was possessed.

12:35:12 19 That's why we introduced evidence from 2015 to
12:35:17 20 2019. In other words, before, during, and after the time
12:35:22 21 when the defendant bought the gun and when he possessed it,
12:35:27 22 because that establishes the pattern of use or possession of
12:35:35 23 a controlled substance that reasonably covers the time that
12:35:38 24 the firearm was possessed. Of course on October 12th, the
12:35:41 25 day he bought the gun is when the -- is the beginning of

12:35:44 1 when the firearm was possessed, so you can consider the
12:35:47 2 evidence of the defendant's pattern of use of a controlled
12:35:52 3 substance to conclude that he was using at the time he
12:35:55 4 bought the gun, as well, and that he knew it. Judge Noreika
12:36:01 5 also instructed you on the definition of an addict, and
12:36:05 6 again the government doesn't have to prove, and you need not
12:36:08 7 find to convict, that the defendant was both a user of and
12:36:11 8 an addict, but I would submit the evidence supports both.
12:36:15 9 And the definition of addict is any individual who
12:36:20 10 habitually uses any controlled substance so as to endanger
12:36:23 11 the public morals, health, safety, or welfare, or who is so
12:36:28 12 far addicted to the use of a controlled substance as to have
12:36:32 13 lost the power of self control with reference to his
12:36:34 14 addiction. And again, the evidence and the reason it was
12:36:38 15 introduced from 2015 to '19 shows the defendant habitually
12:36:42 16 used a controlled substance. It isn't something that
12:36:46 17 started the day before he bought and then possessed the gun,
12:36:50 18 or the week before, or the month before, it started years
12:36:53 19 before and it continued for months thereafter. All of that
12:36:57 20 is part of the pattern of use.

12:37:00 21 And he had lost the power of self control with
12:37:03 22 reference to the addiction. That's why he kept going to
12:37:06 23 rehab. He couldn't stop on his own. Now I would like to
12:37:15 24 turn to the evidence of a pattern of use or possession of a
12:37:20 25 controlled substance that reasonably covers the time the

12:37:22 1 firearm was possessed, including October 12th. First, you
12:37:29 2 see the defendant's own words and messages from 2018 and
12:37:33 3 2019, a year worth of messages from the spring of 2018 to
12:37:39 4 the spring of 2019. And these messages alone establish a
12:37:42 5 pattern of use of a controlled substance that reasonably
12:37:46 6 covers the time the firearm was possessed, including
12:37:50 7 October 12th when he bought the gun. And I'm not going to
12:37:53 8 go through all of them, you saw them when Special Agent
12:37:57 9 Jensen testified, you seen them with other witnesses, you'll
12:38:02 10 have them. But briefly we see in these messages, him buying
12:38:07 11 drugs, telling other people he's using drugs, describing
12:38:11 12 himself as an addict, and we see it over this whole period
12:38:14 13 of time. We see messages from April of 2018. We see
12:38:20 14 pictures from April of 2018 of drugs and the defendant
12:38:24 15 weighing drugs on scales. We see messages from May of 2018
12:38:29 16 where he's using coded language. We see messages from May
12:38:33 17 of 2018 where he's buying from multiple dealers. We see
12:38:40 18 messages from June of 2018 where he's making purchases. And
12:38:44 19 in July of 2018. And we see messages in October where he's
12:38:51 20 buying, that's what he's telling Hallie Biden on October
12:38:56 21 the 13th, and then later we see what he is buying when he
12:39:01 22 tells her that he's with Bernard who hangs out at 7-Eleven
12:39:07 23 on Greenhill and Lancaster, and that he's waiting for a
12:39:11 24 dealer named Mookie, and that his brother L is get in the
12:39:15 25 car, and that he has my money and I'm getting pissed. And

12:39:19 1 we see on the 14th, him telling Hallie Biden that he's
12:39:23 2 sleeping on a car smoking crack on 4th and Rodney, what he
12:39:27 3 calls his truth.

12:39:28 4 And we see addiction messages in October when
12:39:35 5 Hallie Biden tells him she wants to help him get sober, she
12:39:40 6 testified she was referring to both drugs and alcohol, not
12:39:42 7 just alcohol. And in response, he says what one thing have
12:39:47 8 you done to help me get sober? And we see other addiction
12:39:51 9 messages in October where she talks about, where Hallie
12:39:55 10 Biden talks about getting him into a rehab. And other
12:40:00 11 addiction messages in November where the defendant calls
12:40:04 12 himself an addict and where Hallie Biden pleads with him to
12:40:09 13 try to address his addiction.

12:40:12 14 And other messages in November where he calls
12:40:17 15 himself separately both a drunk and an addict.

12:40:24 16 And in messages in November, we see the word,
12:40:30 17 relapse, which we see appear in his book, and it's clear
12:40:35 18 from his own use of the word that relapse refers to his
12:40:39 19 addiction to crack cocaine. We see drug messages in 2018
12:40:49 20 where he's texting with a woman and talking about his crack
12:40:53 21 use.

12:40:54 22 We see messages in November 18th where he's
12:40:57 23 buying. We see addiction messages in 2018. We see both
12:41:04 24 drug messages and addiction messages later in December of
12:41:09 25 2018, including images. And we see messages in 2019. And

12:41:19 1 in February of 2019. And in March of 2019.

12:41:26 2 We don't just have his messages from the time,
12:41:31 3 although I submit that would be enough to convict. We also
12:41:35 4 have his own words in his memoir describing buying and using
12:41:39 5 drugs during that whole period from 2015 to 2019,
12:41:44 6 four years, what he called four years of active addiction,
12:41:52 7 and how he relapsed after numerous attempts at rehab,
12:41:54 8 including after The View, the rehab center he went to for
12:41:58 9 about a week late in August of 2018 in California.

12:42:03 10 And I'm not going to play the audio again, I'm
12:42:06 11 not going to go back through all of the excerpts, just by
12:42:11 12 way of book ends in his prologue, he referred to himself as
12:42:15 13 a drug addict, and what is searingly painful, but I would
12:42:20 14 submit personal and honest descriptions, and at the end when
12:42:27 15 he talked about, at the end of his book when he talked about
12:42:30 16 his four years of active addiction. His memoir also
12:42:35 17 establishes a pattern of use of a controlled substance that
12:42:39 18 reasonably covers the time the firearm was possessed,
12:42:42 19 including October 12th when the gun was bought. Now we
12:42:50 20 heard testimony from Kathleen Buhle, and this is also part
12:42:53 21 of the pattern that she learned he was smoking crack in 2015
12:42:57 22 and in that period of time she searched his cars and found
12:43:01 23 drug remnants and drug paraphernalia on approximately a
12:43:05 24 dozen occasions, including in 2018, and that in that period
12:43:08 25 the defendant discussed his addiction with her.

12:43:11 1 And we heard detailed testimony from Zoe Kestan,
12:43:16 2 who was his companion through what he called his California
12:43:21 3 Odyssey. The months and months and months of by his own
12:43:25 4 description what he called debauchery rolling from one
12:43:29 5 expensive hotel to another in Los Angeles. In sum, she saw
12:43:36 6 the defendant smoking crack from December 17th from when she
12:43:40 7 first met him, from the very first meeting, thru November of
12:43:44 8 2018 when she was with him at a rehab facility where he was
12:43:49 9 using drugs. And importantly, and I'll come back to this,
12:43:52 10 including after his stay at The View, which again was at the
12:43:55 11 end of August. She saw him at the end of September in that
12:43:58 12 house in Malibu, and he was using crack cocaine again, just
12:44:03 13 a few weeks before he bought the gun.

12:44:06 14 Again, she testified he was smoking something
12:44:12 15 she assumed to be crack in their first meeting at Vivid
12:44:17 16 Cabaret in Midtown Manhattan in 2017, the next time she saw
12:44:22 17 him at the Soho Grand, he was smoking crack within 10 to
12:44:27 18 15 minutes of her arrival. Within the next ten days she
12:44:30 19 observed the defendant smoking crack often, sometimes as
12:44:34 20 often as every 20 minutes. She also said importantly when
12:44:37 21 they were out and about or busy talking to people, he would
12:44:42 22 excuse himself once an hour. She testified he was smoking
12:44:45 23 crack in January of 2018 when she stayed with him at the
12:44:49 24 Borgata in Atlantic City. He was smoking crack in February
12:44:53 25 of 2018, when he stayed with her at The Four Seasons, and

12:44:56 1 she also testified that the defendant bought drugs from a
12:44:59 2 dealer named Frankie in New York in February of 2018 when
12:45:04 3 they were staying at The Four Seasons.

12:45:06 4 The defendant was smoking habitually and
12:45:09 5 frequently in March of 2018 while staying with Ms. Kestan
12:45:12 6 for six days at The 6 Columbus Hotel in New York, and he was
12:45:16 7 using in March of '18 at the Mercer Hotel in New York, and
12:45:21 8 we saw pictures from that time depicting crack pipes in a
12:45:25 9 glasses case next to the defendant in a bathroom. The
12:45:29 10 defendant was smoking crack in April and May when they moved
12:45:33 11 to California and stayed at the Chateau Marmont and we
12:45:37 12 showed a picture of the defendant and Ms. Kestan in a
12:45:40 13 bathtub with the defendant smoking crack on May 11th:
12:45:44 14 Ms. Kestan testified that the defendant was purchasing crack
12:45:47 15 and cocaine from various dealers in California at the
12:45:51 16 Chateau Marmont in April and May of 2018. And that he began
12:45:55 17 cooking powder cocaine into crack in May and began to do so
12:46:01 18 in June of 2018. We saw pictures that reflected that,
12:46:05 19 burned residue, substances used for cooking cocaine into
12:46:08 20 crack, and for cleaning crack pipes and other crack
12:46:12 21 paraphernalia. Ms. Kestan testified the defendant was
12:46:14 22 smoking crack in June, and that he was smoking crack in July
12:46:18 23 and August, and that he was smoking crack in late September
12:46:23 24 at the house in Malibu, again, after he had gone to The
12:46:27 25 View. And then when she saw him again in early -- in early

12:46:32 1 to mid November, he was again using, this time while he was
12:46:39 2 receiving rehab in Massachusetts. She also testified that
12:46:42 3 the defendant withdrew large sums of cash with which to buy
12:46:46 4 drugs and that he also provided ATM codes to drug dealers so
12:46:51 5 that they could withdraw money from his account to pay for
12:46:54 6 his drug purchases.

12:46:55 7 She testified that the defendant stored drugs in
12:46:58 8 leather pouches, that he discussed his addiction with her,
12:47:01 9 and again, you saw photographs from her phone that shows the
12:47:06 10 defendant with drugs and drug paraphernalia in 2018.

12:47:09 11 You also heard testimony from Hallie Biden that
12:47:12 12 she saw the defendant smoke crack in 2016, '17 and '18.
12:47:17 13 That he discussed his addiction with her. That he -- that
12:47:21 14 she searched his car on multiple occasions including the day
12:47:25 15 we spent so much time focusing on in October of 2018 as part
12:47:31 16 of a pattern, and that pattern was to find drugs and drug
12:47:35 17 paraphernalia and that was throughout that whole period in
12:47:38 18 2016, 2017, and 2018. And she testified that when she saw
12:47:44 19 the defendant on October the 23rd, he looked like he was
12:47:48 20 exhausted and he was using drugs and that she searched his
12:47:52 21 truck because she wanted to help him get sober, which she
12:47:56 22 said included off drugs.

12:47:57 23 You also heard testimony from Hallie Biden that
12:48:01 24 she found drug remnants and drug paraphernalia in the
12:48:04 25 defendant's truck on October 23rd, 2018, and that she found

12:48:09 1 the defendant's leather pouch in that truck which we've
12:48:13 2 learned contained trace amounts of cocaine.

12:48:15 3 On October the 31st, you saw that she texted the
12:48:20 4 defendant that she had found another one of his brown
12:48:23 5 leather pouches, this time in her home next to her son with
12:48:27 6 a crack pipe sticking out of it. And you heard testimony
12:48:32 7 and saw the pouch, that there was in fact cocaine on the
12:48:35 8 inside of the pouch, the pouch that she retrieved from his
12:48:38 9 truck to put the gun in.

12:48:40 10 Now, as I said, we don't have to prove that the
12:48:44 11 defendant used in October. But you heard the argument from
12:48:49 12 counsel, and it is just argument, that the defendant went to
12:48:54 13 a rehab program in California at the end of August and then
12:48:59 14 for a brief period of time had a sober companion, and that
12:49:03 15 with that experience, he moved forward back to Delaware to
12:49:11 16 October the 12th and that StarQuest Shooters and bought his
12:49:15 17 gun, but critically there is overwhelming evidence that he
12:49:19 18 used drugs after that rehab at The View.

12:49:24 19 We saw from the records again that it was a
12:49:27 20 relatively brief period of rehab or detox. It ran, the
12:49:33 21 residential part, only from August the 21st to August
12:49:38 22 the 27th, and he then had a sober companion live with him,
12:49:43 23 apparently, at least some of the time at this house he was
12:49:46 24 renting in Malibu, where Zoe Kestan later said there was no
12:49:52 25 sober companion by the time she got there, and he was using

12:49:56 1 drugs there regularly. We're really only talking 13 days at
12:50:00 2 the end of August into very early September. And again, Zoe
12:50:03 3 Kestan saw him after that. She testified he was smoking
12:50:07 4 crack at The Freehand Hotel in Los Angeles on the 17th, and
12:50:12 5 she testified that he was smoking crack at his house in
12:50:16 6 Malibu between September 13th, when she got there and the
12:50:19 7 23rd, when she left. She saw it in the bedroom, master
12:50:23 8 bathroom, in the kitchen, she said it was all over. There
12:50:27 9 was no sober companion there. And critically the defendant
12:50:31 10 never even mentioned the rehab, the supposedly life changing
12:50:34 11 rehab he had gone through at The View just a few days
12:50:37 12 earlier.

12:50:38 13 Why didn't he mention it? Perhaps because he
12:50:45 14 relapsed, as he told us. In Chapter 9, the chapter of his
12:50:49 15 book about his time in California in 2018, he wrote, Uncle
12:50:54 16 Jim had his own super power, he gets things done. So he
12:50:58 17 jumped on a plane to Los Angeles, pulled me out of a room in
12:51:04 18 the Hollywood Roosevelt, and said I found a place. Let's
12:51:06 19 go. This is how the defendant described his rehab
12:51:10 20 experience, not what you heard in opening, not that it was
12:51:13 21 this event that propelled him clean and sober to October
12:51:17 22 the 12th, this is what he said. "I went, he checked me into
12:51:21 23 a rehab center in Brentwood, where I stayed clean for about
12:51:24 24 two weeks. I then lived in a rental off Nichols Canyon, in
12:51:29 25 the hills, with a sober coach. It was great, the beauty,

12:51:33 1 the peace, the support, right up until the moment I
12:51:37 2 relapsed." Again, that searingly honest account of his
12:51:43 3 time, he tells us he relapsed. Not that he started drinking
12:51:49 4 again, as the defense lawyer argued in opening, but that he
12:51:52 5 relapsed and was using crack again, because that's what this
12:51:56 6 chapter talks about.

12:51:57 7 And he does it again in Chapter 10 of his book
12:52:04 8 where he talks specifically about coming back to Delaware,
12:52:09 9 where defense counsel said he came back clean and sober with
12:52:13 10 a clear head, not thinking he was an addict anymore even
12:52:18 11 though he had been one for years, knew he had been one for
12:52:23 12 years, and only gone through this brief period of detox or
12:52:26 13 rehab. What he said, what the defendant said was "I had
12:52:29 14 returned that fall of 2018 after my most recent relapse in
12:52:33 15 California with the hope of getting clean, (not staying
12:52:36 16 clean), through a new therapy and reconciling with Hallie
12:52:43 17 and neither happened."

12:52:48 18 And then moving into October, we see messages
12:52:54 19 that the defendant was using again. You saw these messages
12:52:59 20 this morning. You saw his setting up meetings in the days
12:53:04 21 right before he purchased the gun on October 9th and
12:53:08 22 October 10th, meetings at the 7-Eleven. And you see the
12:53:13 23 person he's talking about ask him, "you want the same."
12:53:17 24 This is Q who tells him he's at the 7-Eleven." And the
12:53:21 25 defendant tells him on the 11th, the day before he bought

12:53:26 1 the gun, "meet me at the 7-Eleven at three."

12:53:31 2 Now that's the 11th, the day before he bought
12:53:35 3 the gun. On the 13th, the day after he bought the gun, he
12:53:41 4 tells Hallie Biden he's buying, and then if you look at the
12:53:46 5 time, shortly thereafter telling her he's buying, he
12:53:50 6 describes that he's with Bernard, who hangs out at the
12:53:53 7 7-Eleven on Greenhill and Lancaster, the same 7-Eleven that
12:53:58 8 you saw from the location data this morning where he went on
12:54:02 9 the 16th, and he tells her "I'm now off Maryland Avenue
12:54:06 10 behind Blue Rock Stadium waiting to for a dealer named
12:54:10 11 Mookie", I read it to you, you seen it, he describes it
12:54:14 12 almost in real time, this drug purchase almost in real time.

12:54:17 13 And then moving forward in time to the 16th, we
12:54:21 14 see he's at that 7-Eleven, the 7-Eleven where he said the
12:54:26 15 dealer was. And what does he say about meeting at 7-Eleven
12:54:29 16 in his book? He said "no dealer works off a user's urgent
12:54:35 17 timetable so you arrange to meet in front of a 7-Eleven on
12:54:39 18 such and such street, then you sit in your car and wait."

12:54:43 19 Now, in between those messages on the 11th and
12:54:50 20 the 13th and the 16th, it specifically referenced 7-Eleven,
12:54:55 21 there are other messages obviously on the 14th, and you're
12:54:59 22 familiar with them, you have seen them. The one where he
12:55:02 23 tells Hallie Biden he's sleeping on a car smoking crack on
12:55:05 24 4th Street and Rodney, and he says that's my truth. The
12:55:09 25 defense counsel argued in opening that that was somehow a

12:55:14 1 lie. Take the defendant's word for it. That's his truth.

12:55:18 2 And defense counsel argued well he didn't want

12:55:23 3 to see Hallie Biden, so he made up the elaborate story of

12:55:27 4 the names of dealers and these locations and the play by

12:55:30 5 play. Well you were instructed, you use your common sense.

12:55:34 6 The evidence is in this room, but you bring your common

12:55:37 7 sense into that jury box, use your common sense, if he

12:55:40 8 didn't want to see Hallie Biden on October the 13th, let's

12:55:43 9 look at what he could have said. He asked her where she

12:55:46 10 was. She responded she's home. And then she asks where are

12:55:51 11 you, Delaware or D.C., he says New Castle, he says Delaware.

12:55:55 12 If he didn't want to see her, he didn't have to makeup this

12:55:58 13 elaborate story of two drug deals, he could have just said

12:56:03 14 D.C. You don't leave your common sense behind when you come

12:56:07 15 into that jury box and you should apply it here to that

12:56:10 16 argument.

12:56:11 17 And we saw addiction messages in October of

12:56:16 18 2016. Lots of addiction messages in October of 2018, in the

12:56:20 19 period of time after he bought the gun and when he possessed

12:56:24 20 it.

12:56:24 21 Now, the drug messages that I just highlighted

12:56:30 22 several of, as I said covered April of 2018 into March of

12:56:36 23 2019, and there was also testimony obviously about habitual

12:56:41 24 drug use in that period. And there is frankly undisputed

12:56:44 25 testimony that the defendant was using crack in July of

12:56:47 1 2018. And defense counsel asked a lot of questions of
12:56:50 2 various witnesses about whether there were messages in
12:56:55 3 October that were like messages in other months. And
12:56:59 4 sometimes, he even used the specific words, if a message
12:57:03 5 said eight ball, was there a message that said eight ball in
12:57:06 6 October. Well, there was one message that said eight ball,
12:57:10 7 of course it was later, we're not expecting to see that
12:57:14 8 exact same phrasing, and the absence of that isn't evidence
12:57:17 9 of anything. If you step back and you wonder in a month
12:57:20 10 with habitual use, if the contrast defense counsel is trying
12:57:25 11 to draw is between October and other months, what does that
12:57:29 12 look like? How many -- on how many days do we see drug
12:57:34 13 messages in a month like July where he's using heavily. One
12:57:38 14 day. Why is that? Well, these messages are only one of the
12:57:46 15 ways you heard testimony about how he bought drugs. He
12:57:51 16 called people on the phone, you heard testimony about that.
12:57:54 17 In his book, he described driving into certain parts of town
12:57:58 18 to buy drugs. And you can imagine and he talked about all
12:58:04 19 of the ways he got drugs other than specifically sending
12:58:09 20 messages. But for comparison purposes, this is what you
12:58:13 21 see, a month of heavy drug use, one day with those kind of
12:58:17 22 messages. What does October look like, twice as many. We
12:58:26 23 see drug messages on the 13th and 14th, we saw meeting
12:58:30 24 messages, as I said, on the day before drugs were purchased.
12:58:33 25 But this idea that there was heavy drug use and that

12:58:37 1 correlates with many messages over many days, and there
12:58:41 2 isn't that in October and therefore that -- you should draw
12:58:44 3 the inference from that that he wasn't using or wasn't
12:58:47 4 addicted, simply isn't born out by the evidence.

12:58:50 5 What do we know specifically about that month of
12:58:56 6 October. You see on the screen those drug messages on the
12:59:00 7 13th and the 14th. You see the addiction messages depicted
12:59:04 8 on the 15th and the 23rd. You see the meeting messages on
12:59:08 9 the 10th and the 11th, the day before he bought the gun on
12:59:11 10 the 12th, and you see on the 23rd both addiction messages
12:59:15 11 and drug remnants and drug paraphernalia recovered by Hallie
12:59:20 12 Biden in the truck. That's a lot of evidence of drug use
12:59:26 13 and addiction in the month of October. It is evidence
12:59:29 14 beyond a reasonable doubt.

12:59:30 15 And what else do we see in October? We see that
12:59:34 16 persistent cash withdraws, hundreds and thousands of dollars
12:59:39 17 every day. And that's part of a pattern that was over
12:59:43 18 September, October, and November, almost a hundred -- more
12:59:51 19 than \$150,000 that was pulled out of ATMs in those three
12:59:56 20 months, day-to-day, over and over and over again. And we
12:59:59 21 know, we know that he was using in both October and November
13:00:03 22 and the cash is consistent across September, October, and
13:00:07 23 November.

13:00:09 24 Zoe Kestan testified cash was used to pay for
13:00:13 25 drugs, and you heard other testimony that you can't use a

13:00:15 1 credit card to pay for drugs, and that goes without saying.
13:00:18 2 And what kind of amounts did the defendant pay? Well we
13:00:22 3 heard in his book when he was in Nashville about \$1,500.
13:00:26 4 And then we see in November an amount about that. And that
13:00:31 5 range, in the mid thousands, occurs over and over again in
13:00:39 6 this three-month period, including October.

13:00:44 7 Now, defense counsel asked questions about
13:00:47 8 whether the money, the cash was used for rehab. And the
13:00:53 9 evidence is it wasn't. And that's because the rehab was
13:00:56 10 paid for in August. None of the cash in September, October,
13:01:02 11 or November was for rehab. You see each of the invoices,
13:01:06 12 and these are in evidence, show that there was no balance,
13:01:12 13 they didn't take credit. The defendant was required to pay
13:01:16 14 for the rehab on the day it started. And you see that over
13:01:19 15 and over again. It was paid on August the 21st for that
13:01:24 16 day, on the 23rd for the next couple of days, on the 24th
13:01:27 17 for that day, on the 24th for the next few days after that,
13:01:34 18 on the 27th for that day, and the sober companion was all
13:01:40 19 paid up by the 27th as well, so no money, none of that cash
13:01:45 20 was used to pay for rehab.

13:01:47 21 Defense also suggested or asked through his
13:01:50 22 questions whether the cash in September was for Airbnb, and
13:01:54 23 again we see in the evidence that that is not the case. The
13:01:57 24 defendant paid for the Airbnb where he was staying using his
13:02:00 25 Visa check card, which is not an ATM withdraw.

13:02:06 1 Now, you heard testimony that the defendant was
13:02:11 2 in New York in between when he bought the gun and when
13:02:14 3 Hallie Biden found it. Naomi Biden testified that the
13:02:18 4 defendant came to New York on October 15th to get back his
13:02:22 5 Ford Bronco, you heard testimony this morning that that date
13:02:25 6 wasn't accurate, he actually was still in Delaware, and was
13:02:29 7 -- and the evidence you saw was that there were these
13:02:32 8 meetings set up and his location put him at the 7-Eleven
13:02:37 9 that's described in that text message where he met Bernard,
13:02:47 10 and by October the 17th he still hadn't retrieved his truck
13:02:51 11 and his daughter messaged him in the afternoon. He didn't
13:02:55 12 respond until a little before midnight.

13:03:00 13 And then at 2:42 in the morning, he asked "where
13:03:06 14 are the keys to the truck" and more remarkably whether her
13:03:11 15 fiance could bring the truck to 57th and 5th, so he could
13:03:15 16 trade with them, this is 2:40 in the morning on a Thursday
13:03:18 17 and he's asking his daughter, who lives in Brooklyn, if her
13:03:23 18 fiance can drive into Manhattan to exchange cars when he's
13:03:27 19 been there for some amount of time by this point, and his
13:03:31 20 daughter responded by asking right now, and then the
13:03:34 21 defendant never responded.

13:03:35 22 We know from the text message that he was
13:03:38 23 actually at The Four Seasons in New York on the 18th. Then
13:03:42 24 she texted him later on the 18th, this time in the daytime,
13:03:46 25 in the afternoon, asking to try to set up an exchange for

13:03:50 1 the car, and asking if she could see him, and her father
13:03:56 2 told her no. And she said I'm sorry, really sorry, dad, I
13:04:01 3 can't take this, and then I don't know what to say, I just
13:04:04 4 miss you so much.

13:04:05 5 Remember, the testimony, the reason I think she
13:04:09 6 was called was to try to suggest he was somehow okay. Well,
13:04:14 7 this isn't okay. Texting at 2:40 in the morning asking to
13:04:21 8 come to Midtown Manhattan to exchange the truck means the
13:04:27 9 defendant is not okay when he's in New York on the 18th.

13:04:30 10 And then hours later at 10:30 the defendant
13:04:33 11 texts her, "I'm sorry I have been so unreachable. It's not
13:04:39 12 fair to you." You remember her testifying that when he was
13:04:42 13 using, it was difficult to communicate with him. And she
13:04:45 14 testified she didn't know why he had been unreachable.

13:04:51 15 And then finally on the following day on the
13:04:51 16 19th, they were able to set up a time to meet and the
13:04:54 17 defendant picked up his truck, days after, no matter when
13:04:59 18 you start the time frame, he got to New York.

13:05:04 19 Critically when she returned the truck to her
13:05:14 20 father on the 19th, there was no drug remnants in it and no
13:05:18 21 drug paraphernalia, and I'll return to that in a moment. As
13:05:20 22 I said, Hallie Biden testified she saw the defendant on the
13:05:23 23 morning of the 23rd, which would be 10/23. He looked
13:05:27 24 exhausted and it looked like he had been using drugs. After
13:05:31 25 he got to her house, he went to sleep. Then she searched

13:05:35 1 the truck, which was part of a pattern of looking for drugs
13:05:38 2 and alcohol, a pattern, that's the word the jury
13:05:41 3 instructions uses, a pattern of active use, that included
13:05:45 4 October of 2018. And she testified that she did this in an
13:05:49 5 effort to try to help him get or stay sober.

13:05:52 6 And if you compare what Naomi Biden said that
13:05:56 7 she returned the truck to her father clean on October 19th,
13:06:01 8 2018, that there were no drug remnants in it and there was
13:06:06 9 no drug paraphernalia in it, to Hallie Biden's testimony
13:06:10 10 that she searched the truck on October 23rd, just a few days
13:06:14 11 later, that she found drug remnants. Remember, the way she
13:06:18 12 testified what a drug remnant is, is when you break pieces,
13:06:23 13 smaller pieces of crack off a larger rock, a lot of it falls
13:06:27 14 and breaks off, that's what a remnant is, and that's what
13:06:31 15 Hallie Biden saw in that truck on October the 23rd, and she
13:06:35 16 also found drug paraphernalia.

13:06:37 17 So what does that mean? What does a clean truck
13:06:41 18 with no drug remnants and no drug paraphernalia on
13:06:45 19 October 19th, as in the testimony of the defendant's own
13:06:48 20 daughter, and then a truck with drug remnants and drug
13:06:51 21 paraphernalia on the October the 23rd, what does that mean?
13:06:56 22 It means the defendant used crack in the truck between
13:07:00 23 October 15th, 2018, and October 23, 2018, October 19th, when
13:07:05 24 he got it back. Now nobody saw it, right? But you heard
13:07:10 25 Her Honor instruct you that we rely on circumstantial

13:07:14 1 evidence just as much as we rely on direct evidence. And
13:07:19 2 this is circumstantial evidence beyond a reasonable doubt
13:07:21 3 that he used drugs in that truck in that period.

13:07:24 4 It's like if you go to bed at night in the
13:07:27 5 winter and there is no snow on the ground, and you wake up
13:07:30 6 the next morning and there is snow on the ground, you know
13:07:33 7 it snowed. And that's what this evidence showed. The
13:07:35 8 defendant used drugs in that truck in between the time his
13:07:39 9 daughter returned it, whenever it was in that week and when
13:07:44 10 Haley Biden found the gun in it.

13:07:48 11 So to be clear, what leads to the three felony
13:07:51 12 charges in this case are the defendant's choices, not anyone
13:07:55 13 else's. The testimony, the texts, and the photographs that
13:08:00 14 are evidence of his addiction may provoke disgust or
13:08:05 15 sympathy, or both, but the defendant wasn't charged with
13:08:08 16 being an addict and as Mr. Hines said in opening, while
13:08:12 17 addiction is not a choice, buying a gun is. And lying to
13:08:16 18 buy that gun is a choice. And that, that is why we're here.

13:08:22 19 The evidence that the defendant made those
13:08:26 20 choices to buy a gun and to lie about it and that he knew he
13:08:31 21 was lying about it, that he did it knowing exactly what he
13:08:35 22 was doing is beyond a reasonable doubt.

13:08:38 23 It supports only one verdict, guilty as to all
13:08:44 24 three charges.

13:08:45 25 Thank you.

13:08:55 1 THE COURT: All right. Thank you. Mr. Lowell.

13:08:58 2 MR. LOWELL: Thank you, Your Honor.

13:09:01 3 Thank you, ladies and gentlemen.

13:09:05 4 When we met a week ago, it seems a lot longer

13:09:15 5 doesn't it, I told you some of the things the evidence would

13:09:17 6 show. And told you some of the things that the prosecutors

13:09:22 7 could not satisfy to meet their very high burden of proof on

13:09:28 8 these very serious charges beyond a reasonable doubt. So

13:09:34 9 how did they just begin their closing argument? With

13:09:39 10 raising whether Hunter's mom, or wife, or sister, or other

13:09:47 11 relatives were sitting in the courtroom.

13:09:52 12 Judge Noreika then at opening will -- has

13:09:58 13 explained some of these important concepts and will when

13:10:01 14 we're done. And these concepts about the burden and these

13:10:06 15 concepts about how high that burden is are there to ensure

13:10:12 16 that no person in your country is convicted improperly.

13:10:17 17 She has instructed you that the presumption of

13:10:21 18 innocence means that the defendant has no burden or

13:10:24 19 obligation to present any evidence at all or to prove he is

13:10:30 20 not guilty. That burden of, or obligation of proof is on

13:10:33 21 the government to prove that the defendant is guilty, and it

13:10:37 22 stays with the government throughout the trial.

13:10:41 23 Reasonable doubt. A reasonable doubt is a fair

13:10:47 24 doubt based on reason, logic, common sense, or experience.

13:10:50 25 Here is the important part. It's a doubt that an ordinary

13:10:55 1 reasonable person has after carefully weighing the evidence,
13:11:00 2 and it's a doubt of the sort that would cause him or her to
13:11:04 3 hesitate to act in the matters of importance in his or her
13:11:09 4 own life.

13:11:10 5 It can also arise by a lack of evidence. This
13:11:14 6 is such an "important matter."

13:11:18 7 You will see in the instructions as well, an
13:11:22 8 incredibly important phrase, which I will come back to you a
13:11:26 9 couple of times while I'm standing here, because what that
13:11:30 10 instruction also says is that reasonable doubt and the
13:11:34 11 burden of proof beyond reasonable doubt does not occur by
13:11:38 12 the phrase in the instruction is suspicion or conjecture.

13:11:44 13 So, because his daughter, Naomi said that he
13:11:49 14 came to New York and she thought about and then said the
13:11:54 15 15th, they then proceed to try to put in as they did texts
13:11:58 16 that would suggest that it was later, or what happened
13:12:02 17 before, and I'll come back to this one, is exactly that
13:12:07 18 conjecture and suspicion.

13:12:10 19 With this very high burden, it's time to end
13:12:14 20 this case. So let me start with what you just heard as
13:12:20 21 well.

13:12:21 22 In opening, I told you that the prosecutors
13:12:25 23 would do what they just did again, they would take various
13:12:29 24 years and make a continuum and then like an accordion sling
13:12:36 25 it all down as if it happened in the period of relevance

13:12:40 1 here. What is that burden to convince each and every one of
13:12:43 2 you individually that you should convict Hunter on these
13:12:46 3 three felony charges.

13:12:48 4 As I said, the key requirement in each of these
13:12:51 5 is that Mr. Biden made a false statement while acquiring a
13:12:58 6 firearm from the seller. And you will see that statement
13:13:04 7 when made was not what he believed to be false.

13:13:08 8 You see as you are expressed that it has to be
13:13:14 9 material, and I'll come back to that one, and you will see
13:13:18 10 why on that day we presented the questions that we did so
13:13:21 11 that you will see what was or was not material.

13:13:23 12 In Count 2, it says Mr. Biden knowingly made a
13:13:27 13 statement or representation, knowingly in an ATF form that
13:13:32 14 he knew the statement or representation was true. And we
13:13:36 15 have said and spoken and showed you that the word knowingly
13:13:40 16 cannot be proved beyond reasonable doubt, or that his
13:13:44 17 representation was false, or that he at the time, and I'll
13:13:50 18 come back, knew the statement was untrue.

13:13:54 19 And the third is that Hunter knowing, knowing
13:13:58 20 that he was an unlawful user of a controlled substance or
13:14:02 21 addicted to a controlled substance did knowingly possess a
13:14:06 22 firearm, and again, the critical phrase or word that the
13:14:11 23 prosecutors leave out are the issue of knowing. And I will
13:14:16 24 come back to that.

13:14:17 25 You just heard that Mr. Wise said he knew he was

13:14:23 1 an addict and wrote about that he was an addict and spoke
13:14:27 2 about the fact that he was an addict as if that was in real
13:14:30 3 time. But this is what you will have heard already. A
13:14:34 4 person accounts knowingly if the person acts voluntarily and
13:14:37 5 intentionally and not because of a mistake, an accident, or
13:14:41 6 some other innocent reason. That means the government must
13:14:44 7 prove beyond a reasonable doubt that the defendant was
13:14:46 8 conscious and aware of the nature of the actions and of the
13:14:50 9 surrounding facts and circumstances as specified in the
13:14:53 10 definition of offenses charged.

13:14:56 11 That means that knowingly is not just what you
13:15:00 12 heard, that it applies to the count about simply whether he
13:15:03 13 thought at the time a form was run, but knowingly also
13:15:08 14 applies to the other count about possessing.

13:15:12 15 I want to address this issue of his use, of
13:15:15 16 course I want to address that. And then how do the
13:15:18 17 prosecutors try to prove that that occurred beyond a
13:15:23 18 reasonable doubt. They spent hours, I mean literally hours
13:15:26 19 recounting Hunter's terrible journey through alcohol and
13:15:31 20 drug abuse. Most, of what I explained when I first met you,
13:15:35 21 that he admitted, as you just heard. As if him saying I am
13:15:39 22 an addict after the fact meant that he was an addict
13:15:43 23 throughout the period and knew it in the way it was
13:15:45 24 expressed.

13:15:46 25 But remember what they did again. They blurred

13:15:49 1 all those years before he walked into StarQuest Shooters,
13:15:54 2 and a year and two later. What they did was squeeze 2016,
13:16:00 3 2017, early 2018, and when they say 2018, please pay close
13:16:07 4 attention to how they take the first part, wherein his own
13:16:11 5 words, his own book, he doesn't deny that he was in that
13:16:15 6 period of time, and then skip as if the same would apply
13:16:19 7 later in the year. Remember again the book with all that's
13:16:24 8 said and written by him was after the fact, looking readily
13:16:30 9 backwards, not what he thought at the time. And as Agent
13:16:34 10 Jensen said, it was not a diary.

13:16:37 11 And I told you when we met and I'll tell you
13:16:40 12 again now, that to do what I just said about condensing all
13:16:44 13 that time, and telling you when he writes he's readily
13:16:48 14 admitting in every part of those years that he was what the
13:16:53 15 law forbids him from being.

13:16:58 16 Have you ever seen the magicians trick of having
13:17:04 17 you look at this hand, while in the other hand is where the
13:17:09 18 trick is being done? Look at this, and then see that in the
13:17:14 19 hand that matters, there is nothing there.

13:17:18 20 Because when you got to 2018, what was missing?
13:17:24 21 Remember that book, Beautiful Things, that he wrote and was
13:17:29 22 published in 2021, what did it say about the time in Los
13:17:35 23 Angeles from August, when he went to The View, to the time
13:17:39 24 he bought the gun? Not after the incident in which the gun
13:17:43 25 was thrown out and he had that occasion to be involved with

13:17:47 1 Hallie, but in that period, in that book, do you remember?

13:17:51 2 Nothing.

13:17:51 3 Remember what the text said about the time in

13:17:54 4 Los Angeles from August when he went to The View to the time

13:17:58 5 he bought the gun, again, nothing.

13:18:03 6 Yes, I'll come back to what you saw this

13:18:06 7 morning. In fact, you recall the very specifics that Hunter

13:18:10 8 writes about his use in 2016, 2017, and the earlier 2018,

13:18:16 9 and all the other years before and after the fall of 2018.

13:18:22 10 You will remember that in 2016 or '17, you will recall

13:18:28 11 specific photos as you saw them a moment ago, right? Look

13:18:36 12 at the spring of 2018. There are packages of drugs. There

13:18:41 13 is a scale with drugs. You'll remember that there are

13:18:45 14 pipes, a photo with ashes in a bathroom, for 2016 and 2017

13:18:51 15 and the first part of 2018, but then when we got to the

13:18:57 16 period between August and the time you have been talking

13:19:03 17 about in this case, what did you not see? Any such photos.

13:19:08 18 And then they did it again. With crunching

13:19:12 19 texts from the period before October the 9th into October

13:19:18 20 the 16th, you can keep going, where I point out and show

13:19:23 21 you, you won't see those kinds of photos. You won't see

13:19:27 22 those kind of words. You won't see those kinds of scales or

13:19:32 23 the like.

13:19:41 24 So let's go to the proof that they have tried to

13:19:47 25 show you weighs the scale beyond reasonable doubt. Zoe

13:19:53 1 Kestan, who said Hunter was going and was -- when she saw
13:19:57 2 him in late -- no, whenever she said, August into September,
13:20:02 3 late September, says that he was using drugs in the two days
13:20:05 4 she saw him. First of all, remember even then, that's a few
13:20:11 5 weeks before he returns, even so. Consider that against the
13:20:14 6 evidence that when he left The View, you have already seen
13:20:19 7 some of the evidence of what he was doing. He was at The
13:20:24 8 View, and I'll come back to that time period, and he was
13:20:28 9 working with what are called sober coaches, and you know
13:20:33 10 that that happened in that period of time as well. He was
13:20:37 11 living with, and you can see from the evidence, continuing
13:20:41 12 on occasion to see something called that sober coach. And
13:20:45 13 you also know in this period of time that he was visited by
13:20:51 14 his daughter who was introducing him to her now husband when
13:20:55 15 she --

13:20:57 16 MR. WISE: Your Honor, I object. Can we come to
13:20:59 17 side-bar?

13:23:15 18 THE COURT: Yes, you may.

13:23:15 19 (Side-bar discussion:)

13:23:15 20 THE COURT: OKAY.

13:23:15 21 MR. WISE: My objection, using rough transcripts
13:23:15 22 is improper. This is a rough transcript. This is not the
13:23:15 23 final. They are not going to get to see the transcript.
13:23:15 24 This makes them think they can see transcript. It's their
13:23:15 25 memory that controls. They put their thumb on the notes,

13:23:15 1 this puts a thumb on the scale that somehow it weighs what
13:23:15 2 they know. We asked them to exchange demonstratives. If I
13:23:15 3 knew he was going to use transcript quotes, I would have
13:23:15 4 objected. We never used them.

13:23:15 5 MR. LOWELL: Never in twenty-five trials have I
13:23:15 6 heard that. I can introduce it as what your memory says as
13:23:15 7 to what he said, but I certainly can point to something and
13:23:15 8 I can certainly read it to see if --

13:23:15 9 THE COURT: Yes, it's a question of whether you
13:23:15 10 put it up on the screen which makes it seem more vouched
13:23:15 11 for.

13:23:15 12 MR. LOWELL: Can I stipulate that? I don't have
13:23:15 13 to put it on the screen.

13:23:15 14 THE COURT: Just like Mr. Wise said, Zoe Kestan
13:23:15 15 testified whatever, you can say she testified whatever, it's
13:23:15 16 a difference between putting a rough transcript on the
13:23:15 17 screen so it just -- it sort of --

13:23:15 18 MR. LOWELL: I have never heard that before,
13:23:15 19 said before, their memory would do, it's an aid, you're
13:23:15 20 telling me I can't do it, I can introduce as your memory
13:23:15 21 will prevail this is what he said.

13:23:15 22 THE COURT: Why don't you not put it on the
13:23:15 23 screen.

13:23:16 24 (End of side-bar.)

13:23:16 25 MR. LOWELL: Let me say again that of course you

13:23:18 1 have to use your own memory, but you'll remember, for
13:23:21 2 example, that his daughter said that we met him at a coffee
13:23:24 3 shop and we had lunch with him and we met his sober coach.
13:23:29 4 That wasn't all. Agent Jensen told you that as well. She
13:23:35 5 said does this exhibit contain records showing the
13:23:38 6 defendant's stay at a rehab center and with a sober coach.
13:23:42 7 And her answer was yes.

13:23:44 8 So I want you to weigh Zoe Kestan's immunized
13:23:50 9 testimony and I'll come back to a special instruction that
13:23:53 10 you heard Judge Noreika say about her, that came about after
13:23:56 11 seeing the prosecutors, if you will you remember to prepare
13:23:59 12 or should I say rehearse.

13:24:03 13 MR. WISE: Objection, Your Honor. Objection.

13:24:08 14 THE COURT: They can make -- you can't give your
13:24:10 15 opinion of those things, but they can make their own
13:24:13 16 determination.

13:24:14 17 MR. LOWELL: To meet three times for a total of
13:24:17 18 how many? Six hours with the fact that she admitted that
13:24:23 19 she would not go out with Hunter until after she found out
13:24:27 20 who he was, was more than willing to use drugs with him,
13:24:31 21 even introduce him to sellers in Rhode Island when Hunter
13:24:35 22 was trying to be in rehab, spent lots of his money, and also
13:24:39 23 showed you the only photos of drug use in prior and later
13:24:44 24 years from her phone. And Mr. Wise referred to her and her
13:24:52 25 photos. But for all she could do to back up her word after

13:24:57 1 all she had done to meet with the prosecution team, when she
13:25:02 2 said she could show that in those prior times in 2018 and
13:25:06 3 later in 2018 in the fall, winter and into 2019, remember
13:25:12 4 what her photos showed in September when she said she was
13:25:18 5 with Hunter for two days? This was the photo she showed.
13:25:23 6 It's a selfie of her, at the hotel called Freehand. Unlike
13:25:29 7 those other photos, Hunter is not in the hotel room, not
13:25:34 8 bathroom, not ashes, not any of the things that the
13:25:38 9 government kind of went through piece by piece in her photos
13:25:45 10 when it was in fact Hunter was using. What about the next
13:25:48 11 one? This was when he said -- she said she visited him at
13:25:52 12 the Malibu house. And what is it? It's a picture of Hunter
13:25:57 13 in the house smoking a cigarette. Not a crack pipe. No
13:26:05 14 bongs, no other paraphernalia, smoking a cigarette. In the
13:26:10 15 critical time that you have to believe Zoe Kestan when Zoe
13:26:14 16 Kestan has photo after photo after photo when he is using
13:26:19 17 what the government readily points to you, what does she not
13:26:23 18 have? In this case no pipes, no scales, no drugs, not even
13:26:29 19 alcohol bottles. Once again, the lack of photos can speak
13:26:34 20 more loudly than the spoken by her under her grant of
13:26:41 21 immunity.

13:26:42 22 Where else did they go? Poor Hallie Biden, who
13:26:47 23 had to be dragged through this period of her life again, who
13:26:51 24 understandably did not remember a lot of the details. But
13:26:54 25 even she said she did not see Hunter using drugs in this

13:26:58 1 period. And said only that when she went into the truck on
13:27:04 2 October 23rd, first she said there were remnants and
13:27:07 3 paraphernalia, but then when asked said a dusting of powder,
13:27:12 4 I guess. And when I asked her to be more specific and tell
13:27:17 5 us whether those remnants were on the console, steering
13:27:21 6 wheel, floor mats, or car seat, all do you remember she said
13:27:25 7 is, I do not recall.

13:27:28 8 And when asked what type of paraphernalia, she
13:27:32 9 again said, I do not recall.

13:27:36 10 Was she remembering what she saw that day or
13:27:40 11 dozens of other days when she, too, was using, where that
13:27:47 12 more likely than not happened, okay. But if you noticed,
13:27:52 13 she could remember that which the prosecutors asked her, the
13:27:54 14 prosecutors who also gave her immunity, but not so much for
13:27:59 15 any number of things. When she saw Hunter when he came back
13:28:03 16 from LA, even if it was on the day he came back to go with
13:28:08 17 her at an appointment she had at a Caron rehabilitation
13:28:12 18 center or facility, when she saw him -- or when she saw him,
13:28:16 19 whether it was October 22nd or 23rd, whether it was the
13:28:20 20 night, whether it was the night before, whether it was the
13:28:22 21 early morning or when. And you'll remember that I asked her
13:28:27 22 whether or not when I could refresh her recollection, did
13:28:31 23 she know that she was not with him that morning. And do you
13:28:35 24 remember when I had to do that by saying do you remember the
13:28:39 25 reference to calling an Uber? And then she said yes. You

13:28:44 1 don't need an Uber to go from her driveway into the house.

13:28:49 2 And again, it was the government's own exhibit,
13:28:53 3 which showed in Hunter's accounts that on the day of the
13:28:59 4 22nd, and on the day of the 23rd, there are debits for the
13:29:08 5 Best Western Hotel in Wilmington, Delaware. Only after my
13:29:11 6 reminding her of her own texts about a hotel did she then
13:29:19 7 say yes, that's where he was, not at her house.

13:29:24 8 She also could not explain those exchanges I had
13:29:28 9 with her about where those calls back and forth, where are
13:29:33 10 you, meant she obviously wasn't with him. Or when I asked,
13:29:40 11 where the pouch was in the truck, or where and when it got
13:29:45 12 there, or whether her going to the truck was to look for
13:29:49 13 drugs, or in the context of her are you with someone texts,
13:29:54 14 for another reason. Why won't you answer my calls? Where
13:29:59 15 are you? Are you with someone?" And then I asked her
13:30:04 16 whether that someone was her concern about being with
13:30:09 17 somebody who might be with drugs or another woman? You
13:30:13 18 remember what she said. Another woman.

13:30:15 19 And there are the two texts right after this
13:30:20 20 accusatory set of texts asking where he was and with whom,
13:30:26 21 which you have seen now all sorts of times, where he writes
13:30:30 22 her and says he's with that dealer named Mookie, or he's at
13:30:34 23 the 7-Eleven, and indeed, he did write those.

13:30:37 24 And you saw only this morning Agent Jensen
13:30:40 25 saying he then at various times in the weeks before -- a

13:30:44 1 week before or at some other time went to the 7-Eleven, and
13:30:47 2 you saw in the text this morning if you remember that one of
13:30:51 3 those occasions was that 4 or 5 o'clock in the morning where
13:30:55 4 he writes to her "are you up?" Or when he said "I am locked
13:31:00 5 out of the house." And at that hour, where was he,
13:31:05 6 according to Agent Jensen, at the 7-Eleven. They want to
13:31:09 7 give you the inference that what he was doing at that
13:31:13 8 7-Eleven was buying drugs in the morning as opposed to a cup
13:31:17 9 of coffee while he waited for Hallie to wake up.

13:31:21 10 And when they can or when they dig or when they
13:31:29 11 try, they have shown you when they can corroborate where he
13:31:34 12 was with location data, and when they suggest, as I asked
13:31:39 13 Agent Jensen, when they went backwards to find other
13:31:41 14 occasions, was he really at the place, whether he is just
13:31:46 15 putting somebody off and saying meet me at the 7-Eleven.

13:31:50 16 Do you notice this morning that a person writes
13:31:52 17 to him, writes to him and then it could be any number of
13:31:57 18 hours or time in which he responds, then, you remember what?
13:32:02 19 No location data.

13:32:03 20 And Hallie told you what you didn't need her to
13:32:09 21 tell you given the nature of their relationship at any given
13:32:13 22 time, he would lie to her about where he was and that would
13:32:17 23 certainly include when he was with another woman. And she
13:32:21 24 said just to be clear about it, you mention that you cannot
13:32:25 25 trust what he says when he writes to you because you find

13:32:27 1 out sometimes he's lying, correct? And of course she said
13:32:33 2 correct.

13:32:33 3 And I asked whether she knew on that occasion
13:32:36 4 when he said he was sleeping on a car, or at the
13:32:40 5 7-Eleven that day for that reason as opposed to any other
13:32:44 6 reason, she did not know.

13:32:47 7 Now, let me stop here. I am not suggesting that
13:32:49 8 the years that he was in Delaware and that he was using
13:32:52 9 drugs, that couldn't happen at a 7-Eleven, it couldn't
13:32:56 10 happen at some other place, but that's what they did do,
13:32:59 11 they take an event in which is in the middle of what they're
13:33:02 12 trying to prove, and they push it forward as if it means the
13:33:06 13 same thing at the same time, that's the accordion.

13:33:09 14 So you get to hear an exchange not that day,
13:33:18 15 earlier day, later day, and there is a guy named Q, earlier
13:33:23 16 in 2018 you hear a man named Frankie. What didn't you hear?
13:33:28 17 You didn't see in those exchanges that they want you to
13:33:31 18 focus on versus the time that is important any reference to
13:33:35 19 a Bernard, any reference to a Mookie. In retrospect, this
13:33:43 20 was not the best way as even Mr. Wise said to put Hallie
13:33:46 21 off, yes, he could have written I'm in D.C. instead of DE
13:33:50 22 and he writes New Castle. When he wrote that in the midst
13:33:53 23 of their relationship, he wasn't thinking that five years
13:33:56 24 later he would be sitting in a courtroom trying to explain
13:33:59 25 the way they talked to each other.

13:34:02 1 Then they tried to show that they had proof
13:34:07 2 beyond a reasonable doubt with testimony by FBI Agent Jason
13:34:12 3 Brewer about that leather pouch. I told you when we first
13:34:16 4 met that that was going to be what they were going to try to
13:34:19 5 do. Another watch this hand, I'm holding the pouch, don't
13:34:26 6 look at this hand as to what that pouch means.

13:34:31 7 So what do we know about that? First Hallie
13:34:34 8 said she found it in the truck, yet we know Hunter and her
13:34:38 9 pouches or his pouches often were in her house as she said.
13:34:43 10 We know she was looking around for what to do with a gun and
13:34:46 11 the other things that she found. And that she went into the
13:34:49 12 house to find a bag. We know that Hunter did not get the
13:34:53 13 truck back until he got it in New York, and of course it's
13:34:57 14 possible, there is suspicion or conjecture, that some time
13:35:02 15 then and sometime on the 23rd that's when that pouch got
13:35:06 16 into the truck. No evidence of that. It's just her word
13:35:11 17 that that's what she found it.

13:35:13 18 But most importantly, no one can say anything
13:35:17 19 about this exhibit that actually counts. Right? Except
13:35:22 20 that five years after it was taken, by the Delaware State
13:35:27 21 Police, and stayed in some fashion until after the charges
13:35:31 22 in this case were filed, the prosecutors then decided to
13:35:34 23 have it tested, and when they did, they did not find finger
13:35:41 24 prints. But what did they find? They found that trace that
13:35:45 25 the chemist, Mr. Brewer said very small amounts which he had

13:35:52 1 it combined. But what did he not show you? Just remember,
13:35:54 2 the proof beyond reasonable doubt is not on us, it is a
13:36:00 3 suggestion they make and what do you now know about that
13:36:03 4 pouch? You don't know when any residue was put there. You
13:36:06 5 don't know by whom. You don't know where it was at the
13:36:11 6 time. You don't know if there was that residue, whether
13:36:15 7 Hunter put it there, Hallie put it there, or anybody else
13:36:18 8 they were with. It's a big piece of evidence to them, but
13:36:21 9 when you actually think about it, doesn't it actually point
13:36:24 10 out the problem with suspicion or conjecture?

13:36:31 11 And Judge Noreika said during the trial, you
13:36:34 12 heard testimony of witnesses and argument by counsel, that
13:36:37 13 the government did not use specific investigative
13:36:42 14 techniques. She told you very specifically, especially when
13:36:45 15 they want to make something of that pouch that you may
13:36:48 16 consider these facts in deciding whether the government has
13:36:51 17 met its burden of proof.

13:36:52 18 So how else did the prosecutors try to meet this
13:36:57 19 heavy burden? By calling witnesses who often did no more
13:37:01 20 than to again confirm what Hunter admitted. When I told you
13:37:06 21 he would not be contesting his use in other times, but they
13:37:12 22 spent time doing it anyway. They subpoenaed his ex-wife to
13:37:16 23 tell you about his past alcoholism and drug use in 2015 and
13:37:21 24 2016, and a vague reference that she would find
13:37:26 25 paraphernalia in a car or a truck without my asking which

13:37:30 1 one and when, she didn't know that. But what you do know
13:37:34 2 was by this period in 2018, they were not together. I think
13:37:39 3 she even confirmed to me that their contact was other than
13:37:43 4 being together. And she certainly didn't see him using any
13:37:46 5 drugs in that period. But they called her anyway.

13:37:49 6 There was no actual witness to the drug use in
13:37:53 7 this period of time, but again, Agent Jensen, who is sat at
13:37:58 8 table and you see her now, but did not get assigned to this
13:38:01 9 case she said until the fall of 2023, and could compile her
13:38:06 10 text charts, which again if you look at them carefully have
13:38:10 11 distinct differences between what you can show in the
13:38:13 12 earlier years and what you can show when it counts. So many
13:38:18 13 texts about real drug use, versus I am on the top of the my
13:38:25 14 car smoking crack. And again, when you get the
13:38:30 15 instructions, I want you to remember that proof beyond
13:38:33 16 reasonable doubt is not allowed to be arrived with suspicion
13:38:37 17 or conjecture.

13:38:39 18 And then there was the so-called evidence of DEA
13:38:44 19 agent Joshua Romig. Again, watch this hand, pay no
13:38:51 20 attention to that one. He can tell you as he did where does
13:38:55 21 cocaine come from, he can tell you how it was made, he can
13:38:58 22 tell you how it's distributed, he can tell you how much it
13:39:02 23 could cost in any period of time, he could tell you that his
13:39:06 24 job is to go after large distributors to prevent drugs from
13:39:10 25 being sold, when this case is about a single user. And then

13:39:14 1 he could tell you about drug lingo and how Hunter used that
13:39:18 2 lingo in various years. But the more he told you about
13:39:22 3 that, again, it should have emphasized what's different.
13:39:27 4 The lack of proof beyond reasonable doubt because of that
13:39:33 5 stubborn fact that comes up time and time again, that this
13:39:38 6 lingo that they spent so much time to go over with you was
13:39:43 7 in 2016 or '17 or '18, whether they're talking about his
13:39:48 8 book, or the texts. And in the period where he was telling
13:39:53 9 you about this lingo, do you recall what I had him do? Go
13:39:57 10 through every one of the texts in which he was trying to
13:40:02 11 condense the time period and confirm that no such lingo
13:40:07 12 existed at that time.

13:40:09 13 So the next thing they did when they saw me
13:40:15 14 doing that was to ask agent Romig when they came back up,
13:40:20 15 was use of cash, and do you remember his word, inference of
13:40:24 16 drug use. Of course it is. They wanted to leave that off
13:40:30 17 right there, but then I had agent Romig point out the
13:40:37 18 obvious, that cash or debit withdrawals are also to be used
13:40:42 19 for as the witness said, especially for other purposes if
13:40:47 20 there is no operative credit card at the time. If you
13:40:51 21 remember the back and forth with me and with agent Romig
13:40:54 22 after they left off with doesn't cash show drugs, this is
13:40:58 23 what it was. Is large withdrawals of cash on any day that
13:41:01 24 is in the amounts they said used for things other than
13:41:04 25 drugs? The agent said it absolutely can be.

13:41:08 1 Can it be used to give your family cash to pay
13:41:10 2 for their expenses or living? Expert Romig, absolutely.
13:41:15 3 Can it be used to purchase goods if you don't have a usable
13:41:18 4 credit card at the time? Absolutely. Can it be used to pay
13:41:22 5 for the place you checked in for rehab if they'll take it
13:41:26 6 that way? Yes, as far as I know. Can it be used for a
13:41:31 7 person's living expenses themselves to pay for their rent,
13:41:34 8 their groceries, or anything? Yes, it can.

13:41:37 9 Proof beyond reasonable doubt is not making a
13:41:43 10 suggestion that is suspicion or conjecture and then hope
13:41:46 11 that you won't see the difference. Of course he used cash
13:41:49 12 when he bought drugs, but all those amounts that were in
13:41:53 13 each year or each month or each time, is that what they're
13:41:57 14 trying to say that a \$10,000 withdraw on a day is for drugs?
13:42:03 15 These are serious charges that will change Hunter's life,
13:42:07 16 but when the prosecutor wants to make their case beyond
13:42:11 17 reasonable doubt by pointing to a pouch that says nothing,
13:42:14 18 texts from prior years or later months, which highlight
13:42:17 19 what's not there in the operative time, witnesses who are
13:42:20 20 given immunity for their conduct, and then something called
13:42:24 21 an inference that cash means drugs, your job as sworn jurors
13:42:31 22 is to declare that that is not the definition of proof
13:42:34 23 beyond reasonable doubt.

13:42:36 24 What did you hear about Hunter's addiction in
13:42:39 25 those years? By the time of early 2018, by his own words,

13:42:44 1 he was smoking crack as often as 20 minutes, every
13:42:48 2 20 minutes. He had literally fled the East Coast as you
13:42:52 3 remember. Do you remember the word he used, to disappear.
13:42:57 4 To get away from things in D.C. or in Delaware.

13:43:01 5 He did not see his family until one of them
13:43:05 6 visited, or two of them visited in that fall at the end of
13:43:10 7 the summer of 2018.

13:43:13 8 Did you see or hear anything about the type of
13:43:17 9 that 20-minute use in terms of his ability to have "self
13:43:22 10 control" in that instruction when he came back from Los
13:43:26 11 Angeles. When did you hear what -- and then you did hear
13:43:30 12 that he was doing things totally inconsistent with that
13:43:34 13 previous habit that they played for you in his book, and
13:43:37 14 that people testified about him sneaking off and being
13:43:42 15 unavailable, but what did you hear in that period of time?
13:43:44 16 He returned to Delaware who help Hallie with her recovery.
13:43:48 17 He spent him with his family. Had not done that for more
13:43:52 18 than half a year. He did not sit in a car missing
13:43:56 19 airplanes. He was able to pack and get out. Those were not
13:44:00 20 by comparison the actions of a person who believed knowingly
13:44:05 21 that he was what the law forbids him to be. Or a form asks
13:44:11 22 him if he is. The evidence you did see in this period is
13:44:17 23 what I said when we met, kicking crack cocaine is hard.
13:44:21 24 Kicking alcohol, much harder. Even after The View, he ended
13:44:27 25 up drinking, but drinking alcohol while buying or possessing

13:44:32 1 a gun is not the charge, it's not against the law.

13:44:36 2 Mr. Wise said and asked you to look at

13:44:40 3 references to the word sober, to his phrase "I relapsed", as

13:44:45 4 if that meant drugs. Conjecture and suspicion. But what do

13:44:52 5 you have in evidence in that period of time we're talking

13:44:55 6 about? This is what you have. You have all of his bank

13:44:59 7 records, the government's exhibit, on October 1st,

13:45:04 8 October 6th, October 17th, October 18th, October 19th,

13:45:09 9 October 21st, October 24th, and October 30th. You may have

13:45:13 10 a text that they want to say means that he was meeting

13:45:16 11 somebody at 7-Eleven without a location data, okay,

13:45:19 12 conjecture and suspicion, but what you do have is what he

13:45:23 13 was doing and what he met when he uses the word sober. When

13:45:26 14 he says I relapsed, and that is real evidence.

13:45:30 15 Let's turn to the gun sale. Let me turn to the

13:45:36 16 day of October 12th. And the total lack of proof let alone

13:45:41 17 beyond reasonable doubt that on that day Hunter to use the

13:45:45 18 expression in the charge "knowingly" and with intent to

13:45:48 19 deceive was lying on a form asking him in the present tense

13:45:55 20 if he was a user or an addict. Now you know what I said in

13:45:59 21 opening I think, on October 12th, Hunter was shopping for a

13:46:03 22 new phone. This is government Exhibit 24. It is date dated

13:46:07 23 as a status change history, and its time is October 12th of

13:46:12 24 2018.

13:46:12 25 You see that status change history on the 12th.

13:46:17 1 And then you'll remember that Mr. Cleveland identified that
13:46:21 2 AT&T store was just across the parking lot from StarQuest
13:46:27 3 Shooters and Supply. And across that parking lot from the
13:46:32 4 AT&T store was StarQuest Shooters. And then you saw at some
13:46:40 5 point Hunter went inside. And this is what he saw when he
13:46:43 6 did. Given what the evidence the government had but didn't
13:46:48 7 show you about the AT&T store, was he going that day to the
13:46:53 8 shopping center to buy a gun? And what you also saw was the
13:47:03 9 actual sales slip of that day. What is on that sales slip?
13:47:06 10 Yes, there is the gun, yes, there is the bullets, yes there
13:47:10 11 is a speed loader, but you'll see there is also a
13:47:14 12 flashlight, that utility tool, and a BB gun.
13:47:19 13 And you were asked a moment ago to use your
13:47:22 14 common sense. Of course that's what you will bring into
13:47:25 15 your deliberations. So you see all of those, and then you
13:47:30 16 have to you figure out how actually it occurred that day.
13:47:33 17 Mr. Cleveland is a great guy, he's a wonderful salesman, he
13:47:38 18 is as he and others said "the whale hunter." But I think
13:47:41 19 the evidence shows that the more likely sequence of events
13:47:45 20 is what I suggested in opening it would be. A person does
13:47:48 21 not go in, take the time, bought the choices, hear him out,
13:47:54 22 hear about guns, buy the bullets, explains about them, hears
13:47:58 23 something about a speed loader that he never knew before and
13:48:02 24 asks about that, discusses a lock box, and then says by the
13:48:05 25 way, I want to throw in a BB gun across the room on a

13:48:09 1 different shelf, and only after I had decided to buy the
13:48:12 2 other things.

13:48:13 3 Look, I don't know the actual sequence, but I
13:48:16 4 can suggest to you to look at the evidence and figure out
13:48:18 5 why that is the case. Why does it matter? Not because
13:48:24 6 Gordon Cleveland does not remember it correctly, why would
13:48:28 7 he five years later remember whether Hunter went into the
13:48:31 8 store and was killing time and looked to see if there was
13:48:34 9 something that he might like, why would he, he wouldn't.
13:48:37 10 But it does reflect on whether or not Hunter had the
13:48:41 11 necessary intent on the government's charges against him.
13:48:46 12 Let alone whether he went in with the intent to buy a gun
13:48:51 13 knowing that he was not somebody who was allowed to do so.

13:48:54 14 And what I just said the sequence is, again, not
13:48:58 15 using suspicion or conjecture makes sense from what you have
13:49:03 16 in real evidence. You saw the background check's time. If
13:49:08 17 you remember, it was 6:36. And you remember that the sale
13:49:13 18 of all those items with what was discussed with him,
13:49:16 19 explained to him about guns and speed loaders and bullets
13:49:20 20 and all the rest happened in that 16-minute period,
13:49:23 21 according, if that's the way the prosecutors want to suggest
13:49:26 22 it occurred.

13:49:27 23 I think the natural inference is it's not the
13:49:31 24 way it happened.

13:49:32 25 And you also know this anyway because

13:49:36 1 Mr. Cleveland confirmed that between him and Hunter, Hunter
13:49:40 2 did not know about guns, bullets, loaders, and the like.
13:49:45 3 And if you remember my question to him, it went like this.
13:49:50 4 When you and he were talking, you have behind the store as
13:49:53 5 we saw it, a display of guns? And he said yes. I said did
13:49:57 6 he know which ones were which? He said no, that's why I had
13:50:04 7 to explain it to him. Yes, I explained it to him: So when
13:50:08 8 he came in, he didn't say I want a Colt, he didn't say I
13:50:11 9 want a whatever, you're saying he was interested in a
13:50:13 10 handgun? Answer yes. But to be clear, you're the one who
13:50:17 11 explained the various hand guns. Yes, I did. So I asked,
13:50:21 12 when he came in, did he appear to you to be somebody who
13:50:24 13 would even know the difference between a hollow tip bullet
13:50:28 14 and something called a full metal jacket. And he said no,
13:50:31 15 that's why I explained it to him.

13:50:33 16 When he came in the store, did he look like
13:50:36 17 somebody who would even know what a speed loader was?
13:50:40 18 Answer: No.

13:50:41 19 Did you explain that to him as well?

13:50:44 20 Answer: Yes.

13:50:46 21 Then what do we know for sure, surely at some
13:50:50 22 point Hunter was given that 4473 form, but when and by whom
13:50:54 23 is not clear at all. And then the issue came up about the
13:50:59 24 ID. Gordon Cleveland said he got the passport and he needed
13:51:03 25 to check it with Mr. Palimere or Mr. Turner. He said,

13:51:07 1 Mr. Turner said, "we would need for the passport another
13:51:11 2 form of like identification stating his address." Because
13:51:15 3 you can see on the last page of the exhibit that that is
13:51:19 4 what was there. That the passport that was attached to the
13:51:25 5 form, as all passports, don't have the residence address.
13:51:31 6 Mr. Cleveland then said it was Jason Turner who talked with
13:51:34 7 Hunter and I asked, did you see him, meaning Mr. Turner talk
13:51:40 8 -- I asked Mr. Turner, did you see him talk to Mr. Turner at
13:51:43 9 that point, Mr. Cleveland said yes. But then we called
13:51:49 10 Jason Turner. And I said as between you and Mr. Cleveland
13:51:53 11 who was having interactions with Mr. Biden. And Mr. Turner
13:51:57 12 said Mr. Cleveland. And then Mr. Cleveland said that when
13:52:01 13 he was back in the room, only Jason Turner was there. But
13:52:06 14 then Mr. Turner said when Mr. Cleveland came back into the
13:52:10 15 office, that Ron Palimere was there as well, and that's what
13:52:14 16 Ron Palimere said as well.

13:52:16 17 And you saw on the government's exhibit that
13:52:19 18 passport that was written in by Mr. Turner on lines 18 and
13:52:26 19 line 18, and you saw and I asked whether or not given this
13:52:30 20 exchange about what was happening that day was any other
13:52:32 21 form of ID presented? And if so, where would you find it?
13:52:37 22 And you saw A did not. You remember in opening, there was
13:52:43 23 this form with instructions and it made very clear the
13:52:45 24 transferor/buyers must provide a valid government issued
13:52:53 25 photo identification, document to the transferor that

13:52:53 1 contains the transferors/buyers name, residence address, and
13:52:56 2 date of birth, and that's what I asked them about. Mr. Wise
13:53:02 3 said that's irrelevant.

13:53:05 4 Why is that important for you to try to put
13:53:08 5 together when you're figuring out what happened, why, and
13:53:10 6 what Hunter's intent was? Because Judge Noreika has
13:53:15 7 explained that question, that issue of materiality. And she
13:53:19 8 gave you the instruction on materiality, which would
13:53:24 9 reasonably be expected to be of concern to a reasonable and
13:53:27 10 prudent person in connection with the sale of the firearm.
13:53:30 11 Who is selling the firearm that day? The folks at StarQuest
13:53:34 12 Shooters.

13:53:35 13 So then ask yourself how material was any of
13:53:39 14 what you heard them say on that form because you heard that
13:53:43 15 both Mr. Cleveland and Mr. Palimere said that Ron Palimere
13:53:47 16 wanted to get the sale done quickly once they knew who
13:53:51 17 Hunter was.

13:53:52 18 And Hunter did check the boxes and he did sign
13:53:56 19 the form, but when was that? Mr. Turner said that the gun
13:54:00 20 came into the back room with the paperwork, Mr. Cleveland
13:54:03 21 said that did not happen. In addition, Mr. Turner said that
13:54:07 22 when he got the form and the boxes were checked, Hunter had
13:54:10 23 not yet signed the form.

13:54:11 24 Mr. Cleveland did not say that's the way it
13:54:14 25 occurred. And again, I raise these things because you have

13:54:18 1 to decide whether that materiality issue has been satisfied
13:54:26 2 beyond a reasonable doubt.

13:54:26 3 Now to determine if Hunter was knowingly and
13:54:28 4 intentionally lying on the form with any intent to deceive,
13:54:31 5 you have to look at the form again. So let's do that. And
13:54:34 6 you didn't need me and Mr. Cleveland to tell you what is
13:54:37 7 undisputed. There are 13 questions, which carefully ask a
13:54:42 8 buyer and Hunter that day whether he fit into certain
13:54:46 9 categories. And you know now, right, that some ask in the
13:54:50 10 present tense, are you, and you know many ask in the past
13:54:55 11 tense, have you ever. And the all important question 11E
13:55:01 12 that Mr. Wise put up again, that's one of the are you's.
13:55:08 13 When the form wants to ask somebody buying a gun, the
13:55:11 14 question is have you ever used, have you ever been an
13:55:16 15 illegal alien, have you ever had a domestic order against
13:55:21 16 you, that form knows how to ask that question. And you also
13:55:25 17 know that the form has lots of instructions and lots of
13:55:28 18 definitions. And you remember here what Mr. Cleveland said
13:55:33 19 when I asked him or the government's lawyers asked him
13:55:36 20 whether or not how Hunter filled out the form. This is what
13:55:39 21 he said. "In your testimony you observed Mr. Biden looking
13:55:41 22 at the form, you told him to take his time." Answer: "Yes:
13:55:46 23 And you remember that, right?

13:55:47 24 And I asked, the form has multiple pages to
13:55:52 25 look, right? And what did he say. "Yes."

13:55:55 1 So what does that mean? What you know it means
13:55:59 2 is that there are definitions for questions 11A, question
13:56:03 3 11B, question 11C, question 11D, question 11F, question 11G,
13:56:10 4 question 11H, question 11I, 12D, 13 and on and on, but what
13:56:18 5 is undisputed, not conjecture, not suspicion, but actual
13:56:22 6 evidence. There is no definition for what 11E asks. It
13:56:28 7 just skips from F to G -- I'm sorry, D to F.

13:56:33 8 So Hunter, who had returned from The View, where
13:56:36 9 he saw his daughter and his future son-in-law, and who came
13:56:41 10 back on the day he did to be with Hallie when she was doing
13:56:45 11 to her own rehab, now was engaging with his family, which he
13:56:51 12 did not do in his worse drug periods. What would he see, a
13:56:55 13 question not in the past tense, but in the present tense
13:57:00 14 are, and with all you heard about those periods of sobriety
13:57:03 15 and periods of rehab, Hunter's form said no.

13:57:08 16 Remember that instruction I read to you earlier
13:57:12 17 that what these knowingly and with intent to deceive
13:57:15 18 requirements are, that they need to prove beyond reasonable
13:57:19 19 doubt. And as I suggested when we first met, this does not
13:57:24 20 mean what Hunter thinks about himself in 2024, what he wrote
13:57:28 21 about in 2020 or 2021, when he was writing a retrospective
13:57:34 22 about his time, or what the prosecutors think of him, it
13:57:38 23 means what he thought on those key days in October of 2018.
13:57:46 24 And Mr. Wise talked about Gordon Cleveland again, and when
13:57:51 25 he did that, I just thought of something. You know

13:57:54 1 something else that Mr. Cleveland told us? He was the
13:57:58 2 person who spent the most time with Hunter that day, close
13:58:02 3 up. He said he was careful who he would sell guns to. He
13:58:07 4 would even deny a sale to someone who he thought was an
13:58:10 5 alcoholic. Even if he thought so strangely in the law, that
13:58:17 6 he could do so because that is not forbidden in the law here
13:58:21 7 or in the form.

13:58:23 8 And as we pointed out, the form doesn't ask
13:58:26 9 about it or forbid it.

13:58:28 10 Why is it important? You can conjecture about
13:58:34 11 what Hunter was doing, that's conjecture. But you have a
13:58:37 12 person who actually saw him on the day of the sale on the
13:58:41 13 morning on -- or the afternoon where it happened, who spent
13:58:44 14 lots of time with him explaining all those things, who said
13:58:48 15 that's real evidence. And what did he say? I asked. And
13:58:52 16 you don't want to sell a gun, I imagine, to somebody you
13:58:56 17 know to be either high or drunk or using a drug or alcohol,
13:59:00 18 right, Mr. Cleveland said no. Is it your practice to try to
13:59:04 19 understand or glean or observe a person? Mr. Cleveland said
13:59:07 20 yes. And as I understand it, your practice would be that
13:59:09 21 you would try to see whether somebody is glassy eyed, right?

13:59:13 22 THE WITNESS: Yes. Or smells of alcohol. Yes.
13:59:17 23 Or smells ever marijuana. Yes. Or any other indication of
13:59:20 24 a person not being in their normal sober condition.

13:59:25 25 Mr. Cleveland said yes.

13:59:27 1 And then finally in terms of what you know,
13:59:32 2 their high burden and what will make sense given how they
13:59:36 3 describe how Hunter is when he uses drugs, when he was using
13:59:40 4 drugs, this is what he said. And on that day Mr. Biden did
13:59:44 5 not exhibit any of the things you try observe? And he said
13:59:47 6 not at all.

13:59:51 7 Look, it has to be clear from what you heard
13:59:54 8 from Mr. Cleveland and what you see in the form and what you
13:59:57 9 see in the back and forth, that neither Mr. Cleveland nor
14:00:02 10 Hunter were anywhere near trying to deceive each other. So
14:00:05 11 even when you heard the evidence about Hunter's constant use
14:00:09 12 of alcohol or saw pictures where he's doing that, in this
14:00:13 13 case using alcohol as you saw real evidence of those days in
14:00:19 14 October does not forbid him from doing what he is accused of
14:00:23 15 in this case.

14:00:25 16 Odd, but the fact.

14:00:28 17 Let's talk about possession. So what Hunter did
14:00:31 18 do with the gun, what did he do after he bought the gun?
14:00:35 19 This is what Mr. Cleveland said about how it left the store.
14:00:39 20 It came with its own lock box, do you remember that, again a
14:00:42 21 piece of evidence I had to submit to you because the
14:00:44 22 government didn't do it when they were asking him questions.
14:00:46 23 And that is what Mr. Cleveland said about this. I asked,
14:00:51 24 and did you see the lock that you were just talking about
14:00:54 25 has the same name Colt on it? "Yes." It comes with a box?

14:00:58 1 Answer. "Yes." Inside? "Yes." And then I said and then
14:01:02 2 it gets put on the outside? "Yes."
14:01:05 3 And after Mr. Biden left the store with the
14:01:07 4 material that he had purchased and the gun was in the lock
14:01:10 5 box, correct.

14:01:11 6 Answer: "Yes."

14:01:14 7 Mr. Wise said and I'm quoting him there is no
14:01:20 8 evidence this gun was, "not in Hunter's possession." But
14:01:26 9 again, it's their burden of proof, not Hunter's, to fill in
14:01:32 10 a gap as to what happened between October 12th and
14:01:37 11 October 23rd when we know the gun existed. There is no
14:01:41 12 evidence in the record, I don't know that the gun was ever
14:01:46 13 loaded, the speed loader had any bullets in it, we know
14:01:50 14 there was a box of bullet's, so where was that gun between
14:01:54 15 the 12th and the 23rd when Hallie Biden found it. Did it
14:01:58 16 even ever come out of that lock box between those two dates?
14:02:03 17 When Hunter traveled in that period of time, whether it was
14:02:06 18 to Philadelphia that the agent knew he would go to see one
14:02:11 19 of his daughters, or New York where he saw Naomi, when bank
14:02:15 20 records that you can look at say that he might have been in
14:02:17 21 D.C. or any other place, where was it? You don't know.

14:02:28 22 In his argument to you then Mr. Wise talked
14:02:32 23 about the exchange on the night of the 18th with his
14:02:36 24 daughter Naomi in New York. Look at this, pay no attention
14:02:45 25 to that. Because if you look at what was said and you

14:02:48 1 remember when Hunter got to New York and reached out to try
14:02:52 2 to set up their meeting, and it turns out that a text is
14:02:56 3 returned after Hunter calls at the 2 o'clock in the morning,
14:03:02 4 you'll see that Naomi is involved in that exchange. He
14:03:05 5 didn't wake her up.

14:03:08 6 When he says that is Mr. Wise, pointing you to
14:03:13 7 one text that says, "I can't take this", conjecture and
14:03:21 8 suspicion does not make for reasonable doubt. What does
14:03:24 9 that mean? Did you remember what she said, she was
14:03:28 10 unavailable, she was in Brooklyn in court, in that text.
14:03:32 11 Could it mean that she was mad at him because she felt like
14:03:36 12 he was doing something with somebody he shouldn't have. Did
14:03:40 13 it mean something else? That's how they fill in the gaps
14:03:45 14 when they don't have proof.

14:03:46 15 As I indicated in my opening statement, there is
14:03:48 16 no evidence from that day he bought the gun to the day that
14:03:52 17 Hallie threw it out that the gun was anywhere but in its
14:03:56 18 lock box. And then what do you know? On October 23rd,
14:04:03 19 Hallie did something incredibly stupid, and she may have
14:04:07 20 done it for love or she may have done it in my exchange with
14:04:10 21 her because she's always concerned where is Hunter and if
14:04:15 22 he's with somebody else. We know that around 11:15 in the
14:04:18 23 morning, she said she went to the truck and found the
14:04:20 24 StarQuest gun and bullets and speed loader. She was the one
14:04:24 25 to decide to then take it out of that safe in the middle of

14:04:27 1 the car and put it in a bag and take the bag and actually
14:04:31 2 throw it in an open trash can at Janssen's market. Hunter
14:04:38 3 didn't do that.

14:04:39 4 And one more thing. Hallie said that the safe
14:04:42 5 was not working. I'm not sure why she would remember that,
14:04:46 6 she could, she might. As opposed to all the specifics about
14:04:49 7 the dusting or where else everything was including the
14:04:53 8 pouch. And you heard Naomi said that when she left the
14:04:57 9 truck with her dad, that safe was working. The combination
14:05:02 10 was locked. So the prosecutors I guess want you think that
14:05:06 11 somehow got the truck, busted the safe, and that when Hallie
14:05:11 12 got to it, rather than either getting in because she knows
14:05:16 13 the combination or she has her own keys to the truck, that's
14:05:20 14 conjecture and suspicion.

14:05:22 15 And then we saw in the government's exhibit, a
14:05:25 16 video that it's 11:20 that she goes to the store and threw
14:05:29 17 the bag out into the trash. And you saw the texts that at
14:05:34 18 11:45, Hunter is in his truck and he writes the following:
14:05:42 19 "Did you take that from me Hallie? Are you insane. Tell me
14:05:47 20 now. This is no game and you're being totally irresponsible
14:05:50 21 and unhinged."

14:05:52 22 Ms. Biden confirmed what I said to you in
14:05:57 23 opening about Hunter told her what to do next. To go back
14:06:01 24 into the store or go back and find the gun that she had so
14:06:05 25 dangerously thrown out. And he texted her and then called

14:06:09 1 her, as she reported, a minute later. You know, a person
14:06:14 2 who is as the government wants to suggest, he was in that
14:06:17 3 period of time, who is using drugs, can't operate, is a,
14:06:25 4 "danger to the public safety," is the very person who as you
14:06:29 5 heard in a minute later when Hallie Biden told him the gun
14:06:34 6 was gone, what did he say? He said "go inside and get the
14:06:41 7 police."

14:06:42 8 And then you saw in the video her of going from
14:06:47 9 trash to trash to find and surely she was continuously
14:06:52 10 freaked out. But Ms. Biden confirmed as she said she would
14:06:56 11 that Hunter called her back and this is what she said he
14:07:01 12 said. Then when you -- when we saw you get back into the
14:07:05 13 car and then you called him to tell him I didn't find it,
14:07:07 14 yes, and I think you said in that conversation he said to
14:07:10 15 you go tell somebody, got to tell or make, I think to use
14:07:16 16 your phrase, Ms. Biden, a police report.

14:07:20 17 Answer: Right.

14:07:21 18 Hallie then went back into the store as Hunter
14:07:24 19 asked her to do, and the Janssen's store people called the
14:07:28 20 police. And Delaware State troopers, Vincent Clemons and
14:07:33 21 later Josuha Marley arrived. You heard that Trooper Clemons
14:07:38 22 interviewed Hallie and asked her to ask Hunter to come as
14:07:41 23 well. Hunter was 20 minutes away and did just that and also
14:07:46 24 gave trooper Clemons a statement. And corporal Marley
14:07:49 25 confirmed the following: "He was the victim the entire

14:07:54 1 time." And he also said, "Hunter's reaction to what has
14:08:01 2 happened, don't file any charges against Hallie." Hunter
14:08:05 3 and Hallie then left the store that day, certainly that day
14:08:10 4 did not help their relationship. Neither of them. And you
14:08:14 5 saw as I put on the screen the Best Western debit,
14:08:18 6 indicating that on that day he was at the Best Western
14:08:22 7 later. Already too late as to what she said his intention
14:08:25 8 was was to get to Washington D.C. So from October 12th to
14:08:29 9 the 23rd as to gun the prosecutors as I predicted present no
14:08:35 10 evidence that it was ever loaded, carried around, been in
14:08:41 11 public until Hallie did that, or ever used in any way. And
14:08:45 12 then you heard how it all ended, that loveable man, Edward
14:08:51 13 Banner, fishes for recyclables and came up with something
14:08:54 14 more valuable than a soda can or a plastic bottle. And
14:08:58 15 eventually, Delaware State Trooper Billy Greer tracked
14:09:02 16 Mr. Banner down. Again what do you know, it was only Hallie
14:09:07 17 Biden or Ed Banner who ever, ever took the gun in public.
14:09:11 18 When Mr. Banner took officer Greer to the his to get the gun
14:09:18 19 even though he didn't remember what box it was in or what
14:09:22 20 box, he did remember he gave it to the police that day, and
14:09:24 21 than as he said in opening he had a different gun in a box,
14:09:28 22 which he was keeping for a friend whose brother was in some
14:09:31 23 type of trouble, the police took both guns that day and
14:09:33 24 that's what happened to him. On October 29th, the police
14:09:36 25 contacted Hunter again to tell him that they had recovered

14:09:40 1 the gun and he told them he didn't want it back. And again,
14:09:44 2 what do you remember the police officer saying. He again
14:09:47 3 said, I don't want to press charges against Hallie, and I
14:09:50 4 assume he meant Mr. Banner as well. So that's what happened
14:09:54 5 between the time on that day that Corporal Marley wrote in
14:09:57 6 his report that Hunter was the victim of a crime to where we
14:10:01 7 are today.

14:10:01 8 That is the story about the gun that Hunter
14:10:08 9 bought and which existed somewhere for that period of time
14:10:11 10 where there is no evidence of when it came out of his own
14:10:14 11 lock box or whether or not he had it in anyplace he
14:10:18 12 traveled. That's the story about the two days. That's the
14:10:21 13 story about the form with the words is or are, given to
14:10:25 14 Hunter. That's the story about what people at StarQuest
14:10:29 15 told him, or more importantly, for the charges in this case,
14:10:32 16 what they didn't tell him. That's the story of what the
14:10:35 17 form says, not about anything that that question 11E
14:10:40 18 actually means. And that's the story of what people other
14:10:44 19 than Hunter, Mr. Cleveland, Mr. Palimere, Mr. Turner, Hallie
14:10:48 20 Biden, and Mr. Banner did.

14:10:50 21 If there is one thing that the prosecutors did
14:10:54 22 that I think is most unfair as all is to take Hunter's words
14:10:58 23 about being an addict out of the context in which they were
14:11:02 24 spoken at the time. You know this, but even Zoe Kestan and
14:11:06 25 Hallie Biden also explained in the case that the prosecutors

14:11:10 1 put on that a person was an addict in the past means they
14:11:15 2 always refer to themselves as an addict for treatment, but
14:11:19 3 not in the way the law asks about when the words say is, or
14:11:24 4 are. When the prosecutors kept pointing to the times Hunter
14:11:28 5 called himself an addict or a drunk, you now understand what
14:11:32 6 that meant. It meant both that there were times he was and
14:11:35 7 times he was not. But a person saying that in that context
14:11:39 8 at an alcoholic's anonymous meeting, or a narcotic's
14:11:43 9 anonymous meeting, or in a text about himself afterwards, or
14:11:46 10 in a book is not the same as it means when you are
14:11:51 11 understanding what he thought on a particular day at a
14:11:54 12 particular time.

14:11:57 13 Hi, I'm Hunter. And I am an addict.

14:12:01 14 This is what was meant when after the stress of
14:12:06 15 October 23rd when all that gun things occurred, the
14:12:11 16 government showed you this. On October 3rd, a week later,
14:12:16 17 with all that occurred, that's when he writes, "I'm a liar
14:12:21 18 and a thief, and a blamer, and a user, and I'm delusional,
14:12:24 19 and an addict unlike beyond and above all other addicts that
14:12:28 20 you know, I've ruined every relationship I've ever
14:12:32 21 cherished." Is Hunter saying he is an addict on the 23rd in
14:12:36 22 the way the law requires, or is this what you do when you're
14:12:40 23 going back and saying this is what I have been.

14:12:44 24 That's not an admission that the prosecutors
14:12:51 25 want it to be. It is a claim for what he had been, but in

14:12:57 1 November, a cry for help with someone looking back, seven
14:13:03 2 days, 10 days after the gun incident occurred. And you've
14:13:09 3 already heard that there is a definition. The term addict
14:13:14 4 means an individual who habitually uses and even dangers
14:13:18 5 that public safety or welfare and lost the power of self
14:13:22 6 control. I know the government argues that that applies to
14:13:25 7 him, but applies equally to what he was not, because their
14:13:29 8 proof about that is telling you to look at all those prior
14:13:32 9 years, including his book and what happens after the events
14:13:35 10 that matter in this case.

14:13:37 11 As I asked his former spouse Kathleen, and his
14:13:44 12 friend, and his brother's widow, Hallie Biden, confirmed
14:13:48 13 that there were many times when he was in periods of nonuse
14:13:53 14 of alcohol and nonuse of drugs. And remember, I said that
14:13:57 15 he had various times of being in rehab, and Mr. Wise wanted
14:14:01 16 to point to that to show that he was out of control, as
14:14:06 17 opposed to instigating and initiating a period that he was
14:14:09 18 very much in control and not using.

14:14:12 19 And with the evidence you heard from these
14:14:15 20 individuals, Kathleen Buhle and Ms. Biden. Kathleen told
14:14:19 21 you about his rehabilitation, and this is what she said.
14:14:23 22 "He was at crossroads treatment center. He was at an
14:14:27 23 outpatient program at the University of Pennsylvania. He
14:14:30 24 was at a treatment center in Sedona, Arizona. He was at The
14:14:34 25 View in Los Angeles, and later you heard he was in treatment

14:14:38 1 at Newburyport, Massachusetts. You heard from Hallie tell
14:14:42 2 you that Hunter's brother and her ex husband Beau died in
14:14:46 3 2015. You heard Naomi tell you that "he seemed the clearest
14:14:50 4 I had seen him since my uncle died." So that you can
14:14:53 5 understand that Hunter might deal with those traumatic
14:14:58 6 issues in his life, like the death of his brother in 2015,
14:15:02 7 by succumbing to his escape to alcohol or drugs, but in all
14:15:08 8 of his life periods, using and when he was not, Hunter lived
14:15:11 9 that successful life I told you about. He was as Kathleen
14:15:16 10 mentioned, and they met at the Jesuit Volunteer Corp in
14:15:21 11 North West. He graduated law school, he was of counsel at
14:15:23 12 that international law firm of Boies Schiller, and he
14:15:27 13 started his business, Rosemont Seneca.

14:15:29 14 When I hope pointed out in opening why the
14:15:33 15 evidence of his accomplishments, his periods of nonuse, and
14:15:37 16 his recovery was important to you, why, because again, of
14:15:42 17 that requirement that Hunter knowingly or intending to
14:15:46 18 deceive violated the laws that you were told about, or
14:15:49 19 believing when the form asks him whether he is or are,
14:15:54 20 thought himself that way. As I also asked you to consider
14:15:58 21 when I first met you, Hunter has not asked anyone to excuse
14:16:02 22 or forgive him for his mistakes, in using alcohol or drugs,
14:16:06 23 to dull the pain that he felt. In fact, the prosecutors
14:16:10 24 actually played for you his telling you that story, and you
14:16:13 25 heard it in his own voice in the book that you heard. And

14:16:17 1 remember what Agent Jensen said about how they picked out
14:16:20 2 what they played for you in court. They were not looking
14:16:23 3 for the whole story she said, the focus was on excerpts that
14:16:28 4 evidence addiction, and the use of narcotics.

14:16:32 5 Do you recall they spent 40 minutes on 2016 and
14:16:36 6 2017. They spent 20 minutes plus on the first half of 2018.
14:16:42 7 And then some minutes following in 2019. But did you hear
14:16:47 8 even a minute about any of the events that happened in this
14:16:51 9 period of time in 2018, when he came back from Los Angeles
14:16:57 10 to be back home?

14:16:59 11 But even then, I think you can understand what
14:17:02 12 Hunter was saying when you heard this.

14:17:10 13 (Government Exhibit 20(h) audio book played.)

14:17:37 14 MR. LOWELL: Shame and guilt, how far he's come.
14:17:58 15 And then you remember the next thing he said.

14:18:03 16 (Government Exhibit 20(l) audio played.)

14:18:12 17 MR. LOWELL: So you heard that it was Uncle
14:18:16 18 Jimmy that found The View in the summer of 2018. In total
14:18:21 19 of the case, what do you know about this. You saw the
14:18:23 20 government's exhibit, which talked about how much it costs a
14:18:25 21 day of \$2,500. And I asked Agent Jensen, who told you that
14:18:32 22 he was at The View for twelve days, and then you know that
14:18:36 23 Hunter paid for many of these days from his own funds. And
14:18:41 24 then Agent Jensen told you that it was also for services
14:18:44 25 that were provided by something called the sober companion

14:18:48 1 between the dates of August 27th and the 2nd. And you saw
14:18:52 2 that he paid for those as well in the forms and in the bank
14:18:58 3 records you saw.

14:18:59 4 Agent Jensen also told you that Hunter rented a
14:19:03 5 house in Malibu, where you heard people visited him. Now
14:19:07 6 let me show you what the prosecutors might have suggested
14:19:10 7 were for different things. You saw that there were large
14:19:14 8 withdrawals on September 13th, \$14,000; September 27th,
14:19:22 9 \$10,000, in their form, in their chart, in their summary,
14:19:27 10 they put that there. Drugs, or for the Malibu house that he
14:19:33 11 rented when he was with his sober companion?

14:19:37 12 And for the many years, and again, I'm sorry,
14:19:41 13 you have to decide what the actual evidence suggests, not a
14:19:45 14 calendar with all the amounts of money that you have no idea
14:19:49 15 whether it paid for rent or what Agent Romig agreed when I
14:19:53 16 asked him it could be paid for.

14:19:58 17 For the many years and the number of people the
14:20:01 18 prosecutors worked with on the case, do you remember what I
14:20:03 19 asked, because I wanted to get to the real proof, I did want
14:20:06 20 there to be suspicion and conjecture, I asked Agent Jensen
14:20:10 21 when I asked her about The View and the invoices and the
14:20:13 22 bank withdrawals and this is what we said to each other.
14:20:15 23 When you were pointing out, for example the issues of the
14:20:18 24 bank account and the \$5,000 here and the other amounts that
14:20:21 25 you talked with Mr. Hines about and other amounts of

14:20:25 1 thousands of dollars, did you match up those withdrawals?

14:20:30 2 Answer. "No."

14:20:31 3 And when I asked how about the Malibu house that
14:20:34 4 he rented, did you try to find out what that house was, how
14:20:38 5 much it cost per month, and whether any of those withdrawals
14:20:41 6 and payments of cash matched that? She indicated that she
14:20:44 7 had not. Because just like in the excerpts from the book,
14:20:50 8 they were looking only for the excerpts that basically
14:20:53 9 supported their conjecture and suspicions.

14:20:57 10 The prosecutors told you that they were not
14:21:00 11 charging Hunter because of his use of drugs, or past
14:21:03 12 addictions, but honestly, at so many times in this trial,
14:21:08 13 didn't that seem exactly what they were doing? And so Judge
14:21:14 14 Noreika read you the following instruction. You are here
14:21:18 15 only to determine whether the defendant is guilty or not
14:21:20 16 guilty of the charges in this indictment. The defendant is
14:21:24 17 not on trial for any conduct or offense not charged in the
14:21:29 18 indictment.

14:21:29 19 Ladies and gentlemen, I don't know how you come
14:21:35 20 into the courthouse every day. If you come in from the
14:21:39 21 front, right outside is a monument of our nation's Bill of
14:21:44 22 Rights. Those rights are what are at stake in this case.
14:21:47 23 They define Hunter's right to a fair trial, or the
14:21:51 24 responsibility as you jurors have as being the judges of the
14:21:56 25 fact. They are the basis for what Judge Noreika has

14:22:00 1 instructed you and will instruct you again in a bit. Those
14:22:03 2 rights are where you, the jury, get this enormous power, the
14:22:07 3 most we can have in our system to judge another person and
14:22:10 4 determine their life. But as I said, that power comes from
14:22:13 5 tremendous responsibility. Whether you thought it was going
14:22:16 6 to happen or not, and I don't know what you think back a
14:22:19 7 week ago, you were the ones who because you said that you
14:22:23 8 would be fair and impartial were chosen to do just that.
14:22:27 9 And those rights that are on that monument, and the rules
14:22:32 10 that Judge Noreika has given you are the ones that provide
14:22:36 11 you the roadmap for doing the job you swore you would do.

14:22:41 12 Those rights and rules require each and every
14:22:44 13 one of you to hold Hunter's presumption of innocence until
14:22:49 14 the evidence shows each and every one of you individually
14:22:52 15 that they have met that burden of proof beyond reasonable
14:22:56 16 doubt.

14:22:56 17 So let me go back to these one last time. In
14:22:59 18 opening Judge Noreika gave you some and she did again and
14:23:03 19 she will in a bit. Remember, the indictment is not
14:23:07 20 evidence. You heard that numerous times and you know that
14:23:10 21 indictments are written by prosecutors without the
14:23:13 22 involvement of either Hunter or his lawyers.

14:23:15 23 And on our first day, Judge Noreika told you the
14:23:19 24 indictment is not evidence of anything, and you should not
14:23:22 25 give any weight of it ever being filed. And I have told you

14:23:26 1 before and I'll say again, the next is the presumption of
14:23:29 2 innocence. Hunter responded to the charges in this case by
14:23:33 3 saying he was not guilty, and you should have seen by now
14:23:36 4 that he is not guilty given reasonable doubt, the burden of
14:23:39 5 proof, and the presumption of innocence. But if you think
14:23:42 6 that the prosecutors tell you that that's the case, you know
14:23:45 7 that's not the law.

14:23:47 8 And the burden of proof, as Judge Noreika has
14:23:52 9 explained, is always to the prosecutors, to convince each
14:23:54 10 and every one of you individually that each element, there
14:23:58 11 is no contesting that there was a handgun, there is no
14:24:02 12 contesting that handgun wasn't made at StarQuest Supply that
14:24:05 13 day, of course it came in interstate commerce, that's why we
14:24:10 14 stipulated to that. But those elements are the ones that
14:24:13 15 talk about intention to deceive knowingly and all of that is
14:24:16 16 in context.

14:24:17 17 Again, that burden of proof does not allow you
14:24:24 18 to consider or even convict on suspicion or conjecture. We
14:24:30 19 surely pointed out those holes in the prosecutor's evidence,
14:24:34 20 but remember in the burden, a defendant doesn't have to
14:24:37 21 prove anything.

14:24:38 22 In his opening statement, Mr. Hines said, and
14:24:43 23 now Mr. Wise has repeated, "no one is above the law." It
14:24:50 24 does not matter what your name is, the law applies equally
14:24:55 25 they said to all people. You know, he was right, but I

14:24:59 1 think he missed the point. It means that Hunter deserves
14:25:01 2 those rights and protections and the prosecutor's heavy
14:25:06 3 burden of proof as much as anyone, whether it was you, or
14:25:10 4 your parents, or your sister, or your children, or your
14:25:15 5 brothers, or your sisters. And finally, you remember that
14:25:20 6 that burden of proof is the highest that we have in our
14:25:23 7 system of justice. It is beyond a reasonable doubt, which
14:25:27 8 means it would cause an individual of ordinary
14:25:32 9 responsibility to act in the most important issues in your
14:25:36 10 own life. This is such a matter.

14:25:38 11 And finally, there is that requirement, which is
14:25:44 12 the final protection for somebody not being convicted
14:25:50 13 improperly and that requires each and every one of you to
14:25:53 14 unanimously agree that each and every element has been
14:25:57 15 proven beyond that reasonable doubt.

14:25:59 16 So, when you are considering the evidence, each
14:26:04 17 of you has to determine that that did not happen.

14:26:08 18 Applying these rules in our system, designed to
14:26:12 19 protect the innocent, you do not have to figure out why the
14:26:15 20 prosecutors see the evidence differently to support their
14:26:18 21 three felony charges, but you must focus on that all
14:26:22 22 important set of rules about the burden, about what it
14:26:25 23 means, about reasonable doubt, and when you do, when you
14:26:30 24 consider that, this is what you will see. If you present
14:26:41 25 hours of Hunter's book about his use of addiction in 2016,

14:26:45 1 17, before the fall of 2018, or in 2019, but not even a full
14:26:51 2 page about October of 2018, that's reasonable doubt. If you
14:26:55 3 prepare seventy-five pages of texts and photos of Hunter's
14:26:59 4 use of drugs in the early parts of 2018, and ends as you
14:27:04 5 remember with those sixty-two texts in February, and then
14:27:07 6 you try to fill in the gap by going backwards and suggest by
14:27:11 7 suspicion or conjecture that something must have happened
14:27:15 8 before the gun sale because of the text exchange, that's
14:27:18 9 reasonable doubt.

14:27:19 10 If your evidence of October is those facetious
14:27:24 11 texts with Hallie or there after the fact trying to figure
14:27:27 12 out whether 7-Eleven means he was getting a cup of coffee or
14:27:31 13 a gram of drugs, that's reasonable doubt. If you show
14:27:36 14 literally dozens of photos or texts with them not having
14:27:43 15 location data to back them up until those that you can pick
14:27:48 16 and choose, that is reasonable doubt.

14:27:51 17 If you make a case on Hunter's knowing with an
14:27:56 18 intent to deceive lies on a form, the question that he asked
14:28:00 19 does not say have you ever, but on the key question says are
14:28:04 20 you, that's reasonable doubt. If that important all
14:28:10 21 encompassing question, with all the pages of definitions,
14:28:14 22 doesn't have anything to elucidate what "are" means, that is
14:28:19 23 reasonable doubt.

14:28:20 24 If the gun shop employers cannot figure out who
14:28:23 25 did what and when, and despite seeking an ID with a

14:28:27 1 residence, and the passport doesn't have one on the issue of
14:28:30 2 materiality, that is reasonable doubt.

14:28:31 3 If the correct inference of what happened that
14:28:36 4 day has evidence of a new phone at an AT&T store, and that
14:28:42 5 indicates what could have happened that day, not being an
14:28:46 6 intent to buy a gun, but an intent to replace a phone by
14:28:49 7 that wonderful whale hunter, that's reasonable doubt.

14:28:54 8 And if you suggest to Naomi Biden that when she
14:28:58 9 was texting him early in the morning hours, it is as
14:29:02 10 Mr. Wise asked her because Hunter was with a man named
14:29:06 11 Frankie or giving him a bank code, but you don't produce
14:29:09 12 that man or any actual evidence that that exchange happened,
14:29:16 13 and then you ask her if she uses cocaine, that is reasonable
14:29:21 14 doubt. And extraordinarily cruel to his daughter.

14:29:26 15 If you want to plug your gaping holes and proof
14:29:29 16 by asking your own FBI agent the total amounts that went
14:29:33 17 into a business account over the course of a year so that
14:29:36 18 you can flash the number \$3 million up on a screen as if to
14:29:40 19 say what, at some point in his life there were funds and he
14:29:43 20 was wealthy, as if that is the reason that's anything in
14:29:46 21 this case, that's reasonable doubt.

14:29:49 22 And instead of real proof, you want to embarrass
14:29:53 23 Hunter by asking in your last questions what Zoe Kestan's
14:29:59 24 age was when they were together, that's reasonable doubt.

14:30:02 25 If after he bought the gun on October 12th there

14:30:07 1 is absolutely no evidence that it ever was loaded, used,
14:30:11 2 taken out in any of that period until Hallie Biden threw it
14:30:14 3 out, or Ed Banner fished it out, and you know that it was
14:30:18 4 Hunter, when hearing that who made sure that the police were
14:30:23 5 called, that's reasonable doubt.

14:30:25 6 And if the government wants you to believe that
14:30:28 7 Hunter was using, knowing he was violating the law by
14:30:32 8 suggesting that the leather pouch had a few particles of
14:30:35 9 residue but no one knew who put it there, when it was put
14:30:39 10 there, where the pouch had been, and no one even bothered to
14:30:43 11 get fingerprints, that is reasonable doubt.

14:30:46 12 And if the prosecutors want to use suspicion or
14:30:50 13 conjecture, instead of Gordon Cleveland who had the most
14:30:55 14 contact with Hunter on October 12th, and saw him on the day
14:30:59 15 that matters and told you what he did not see, that is
14:31:04 16 reasonable doubt.

14:31:05 17 And if the evidence, the prosecutors want you to
14:31:09 18 believe, even about alleged use of drugs before he came back
14:31:14 19 East, comes from somebody like Zoe Kestan, let me read what
14:31:20 20 Judge Noreika has instructed you about her.

14:31:24 21 You have heard evidence that Hallie and Zoe
14:31:35 22 Kestan have received promises from the government that their
14:31:38 23 testimony will not be used against them in a criminal case.

14:31:40 24 The testimony was received in evidence and may
14:31:43 25 be considered by you. The government is permitted to

14:31:46 1 present the testimony of someone who has received immunity
14:31:50 2 in exchange for their testimony, but you should consider the
14:31:54 3 testimony with great care and caution. You won't find that
14:32:00 4 instruction for anyone else.

14:32:04 5 Ladies and gentlemen, you have been patient with
14:32:08 6 me and my colleagues and I know I've taken a bit of time
14:32:12 7 today, but that is because of the importance of this issue
14:32:15 8 and this case to Hunter's life.

14:32:17 9 The evidence here on these key issues is so
14:32:21 10 lacking that many doubts about what they have presented or
14:32:25 11 more importantly failed to present should now be clear to
14:32:29 12 you. You can go back to the jury room and take hours to
14:32:32 13 review the so many texts and documents again, but you
14:32:36 14 already know what they show, and more importantly you know
14:32:39 15 what they don't show. There is no proof beyond that
14:32:42 16 reasonable doubt that Hunter knowingly possessed a gun when
14:32:45 17 he believed himself to be a drug addict, or lied with that
14:32:48 18 intent to deceive on a form that asked him that.

14:32:51 19 One more thing that I need to explain to you,
14:32:54 20 when I sit down, because of that very, very high burden of
14:32:58 21 proof, the prosecutors get to have one more argument. They
14:33:02 22 may think they have the last word, but actually you have the
14:33:06 23 last word. Each of you individually.

14:33:12 24 When Mr. Hines gets up and does all over again,
14:33:16 25 going through that which Mr. Wise said, and tries to say

14:33:19 1 what I said is not right, they have that occasion, when they
14:33:25 2 do that, please remember the two different hands, and notice
14:33:30 3 what's not in the one that matters.

14:33:33 4 So let me ask you this. If someone in the jury
14:33:36 5 room asks you well, what about that 2016 period? What about
14:33:40 6 the 2017 period? What about the first part of 2018 period,
14:33:44 7 or bring up the texts that you heard only after the weekend
14:33:47 8 when they this morning put it up as if that's more than
14:33:51 9 conjecture and suspicion and doesn't have location data. I
14:33:54 10 want you one of you to say as follows, please one of you
14:33:57 11 remember when Zoe Kestan has photos when he's using drugs
14:34:00 12 but has no photos for the key period in September, I want
14:34:05 13 one of you to point out that the lack of texts with drug
14:34:07 14 lingo, I'd like one of you to point out the lack of photos
14:34:08 15 or videos using pipes or scales, and I would like one of you
14:34:11 16 to make sure that when you see the texts, which says I am
14:34:15 17 with Mookie, or Bernard, or I'm sitting on top of a car
14:34:18 18 smoking crack, what was happening between Hallie and Hunter
14:34:22 19 when that happened.

14:34:23 20 And here is why. I don't know if you noticed,
14:34:28 21 but everyone stood every time you come in the courtroom and
14:34:33 22 when you leave. And that we do for Judge Noreika as well.
14:34:39 23 That's because you, too, are the judges, in fact, as the
14:34:42 24 Judge has told you, it is you, and not her, are the judges
14:34:46 25 of the facts. And that's how important our system depends

14:34:49 1 on you to be the fair and impartial jurors that you swore
14:34:52 2 that you would be.

14:34:54 3 So in that way, I want to thank Judge Noreika
14:34:57 4 and her deputy clerks, and her law clerks, for their 24/7
14:35:03 5 hard work. I want to thank Mr. Hawkins, our court reporter,
14:35:07 6 for getting it down in evidence when all of us spoke too
14:35:10 7 quickly. I probably owe him a greater amount of apology
14:35:14 8 than the others.

14:35:15 9 But especially I want to thank you for giving up
14:35:19 10 so much of your time to make sure the system works and that
14:35:23 11 justice be done.

14:35:26 12 Up until now, I, and my amazing colleagues,
14:35:32 13 David, Bella, Dorothy, and Mr. Radic, we have had Hunter's
14:35:38 14 life in our hands. But now I have to give it to you. But
14:35:44 15 I'm doing that with a confidence because I know you will
14:35:50 16 remember the rules, you will remember the burdens, you'll
14:35:53 17 remember the requirements, and you'll see through those
14:35:55 18 rules the so many things that the promise the prosecutors
14:35:59 19 made for proof beyond a reasonable doubt does not exist.

14:36:02 20 But for all the words that I have spoken, and
14:36:05 21 you know I have spoken so many in this courtroom, you have
14:36:08 22 heard over the past weeks mine were not anywhere as near as
14:36:13 23 good as Hunter's when you heard him say as follows:
14:36:18 24 "Remembering all those things feels like a terrible betrayal
14:36:23 25 of where I am now. It induces an urge that's completely

14:36:26 1 counter to how far I have come. When you realize the effect
14:36:30 2 those recollections can have on your body and mind causing
14:36:34 3 them to work against your deepest desire not to be in that
14:36:38 4 place they prompt feelings of shame and guilty."

14:36:43 5 So with all you've heard, ladies and gentlemen,
14:36:46 6 with my last breaths in this case, I ask you for the only
14:36:52 7 verdict that will hold the prosecutors to what the law
14:36:55 8 requires of them, and to come back and to say that Hunter is
14:37:01 9 not guilty.

14:37:03 10 Thank you so much.

14:37:09 11 THE COURT: How long do you think it's going to
14:37:12 12 be?

14:37:12 13 MR. HINES: Probably about fifteen minutes.

14:37:14 14 THE COURT: Fifteen minutes, do you have
14:37:15 15 fifteen minutes or do you want to take a break?

14:37:19 16 A JUROR: Can I run to the restroom?

14:37:20 17 THE COURT: I think they need a restroom break.
14:37:23 18 Let's take fifteen minutes.

14:37:25 19 COURTROOM DEPUTY: All rise.

14:37:28 20 (Jury exiting the courtroom at 2:37 p.m.)

14:38:06 21 MR. LOWELL: Your Honor, fifteen?

14:38:07 22 THE COURT: Yes.

14:38:11 23 MR. HINES: May we be excused, Your Honor?

14:38:13 24 THE COURT: You may. I'm sorry, I know I'm
14:38:16 25 delaying this.

14:38:16 1 MR. LOWELL: Fifteen minute break.

14:38:17 2 THE COURT: Yes.

14:38:18 3 MR. LOWELL: Thank you.

14:38:19 4 (A brief recess was taken.)

14:55:40 5 COURTROOM DEPUTY: All rise.

14:55:47 6 (Jury entering the courtroom at 2:55 p.m.)

14:55:53 7 THE COURT: All right. Welcome back. All
14:56:13 8 right. Everyone else may be seated.

14:56:15 9 Mr. Hines.

14:56:17 10 MR. HINES: Thank you, Your Honor.

14:56:18 11 Before he concluded, Mr. Lowell suggested that I
14:56:22 12 would come up here and go over and over everything that
14:56:25 13 Mr. Wise discussed with you over the course of his hour long
14:56:30 14 presentation. I don't need to do that. Nothing that
14:56:33 15 Mr. Lowell said undermines what Mr. Wise said in his
14:56:38 16 closing. We went over meticulously the facts and the law.
14:56:42 17 The issues that you are actually considering when you go
14:56:45 18 back into that jury deliberation room.

14:56:48 19 At the outset, there were a number of things
14:56:51 20 that the defense said, which were completely unfair.

14:56:54 21 Mr. Lowell suggested you have this man's life in your hands.
14:56:58 22 You don't have his life in your hands, that's not what
14:57:01 23 you're being asked to do. You're asked to make a
14:57:04 24 determination of the facts and apply the Judge's law.
14:57:08 25 That's it. Nothing more, nothing less. That's what a

14:57:13 1 verdict is. It means to speak the truth, than make a
14:57:17 2 finding about what happened. Was he an addict? Did he know
14:57:20 3 he was an addict? That's what you're going back there to
14:57:23 4 do. Anything else, that's up to Her Honor moving forward.
14:57:27 5 She'll take that into consideration.

14:57:29 6 Now, Mr. Lowell has used this phrase over and
14:57:35 7 over and I think it's correct, I think it fits exactly what
14:57:39 8 the defense has done in this case. He keeps saying he's
14:57:42 9 telling you a story, remember that? Remember that from his
14:57:46 10 opening? He said this is the story of this, and this is the
14:57:49 11 story of that. That's exactly what he's done in this case.
14:57:54 12 It's simply a story, a fictional story, it's not supported
14:57:58 13 by the evidence. And that's why the words of lawyers,
14:58:01 14 including myself, but Mr. Lowell as well, are not evidence
14:58:05 15 that you will be asked to determine in this case, the
14:58:08 16 evidence is what you hear from that witness stand.

14:58:11 17 Now, we're going to go through some of the
14:58:21 18 stories that Mr. Lowell told.

14:58:23 19 First, Mr. Lowell pretended as if he was quoting
14:58:27 20 the defendant saying hi, I'm Hunter Biden and I'm an addict.
14:58:32 21 Start with this. That's not evidence you heard from that
14:58:36 22 witness stand. No witness got up there and said those
14:58:40 23 words.

14:58:41 24 That's not evidence that you can consider in
14:58:44 25 this case.

14:58:45 1 And what Mr. Lowell is doing by saying that over
14:58:48 2 and over and throwing it out there is he's cheapening those
14:58:52 3 words. As you heard from Hallie Biden, those words mean
14:58:55 4 something. When you say it, you mean it. What Mr. Lowell
14:59:00 5 could have said, but left out, was he could have said, "Hi.
14:59:05 6 My name is Hunter Biden and I am an addict. And I chose to
14:59:09 7 lie and buy a gun." Because that's why we're here. He went
14:59:14 8 that additional step and chose to buy a gun on October 12th,
14:59:18 9 2018. Had he just been an addict, had he been troubled, had
14:59:22 10 he continued to use narcotics, smoke crack every
14:59:26 11 fifteen minutes throughout 2018 and decided not to buy a
14:59:31 12 gun, we wouldn't be here in this courtroom. Choices have
14:59:35 13 consequences and that's why we're here.

14:59:37 14 Now, Mr. Lowell suggested that it was unfair and
14:59:44 15 that we were playing portions of the defendant's book in
14:59:48 16 this trial. We played about an hour of audio in this case.
14:59:51 17 And he made two different arguments regarding that audio.
14:59:54 18 First of all, he said we picked and choose out of context
14:59:58 19 what we were playing. Well, we played a full hour. Would
15:00:01 20 you like to have heard more of that audio book?

15:00:04 21 And second, he suggested it was sort of unfair
15:00:07 22 that we were playing this book, which was evidence of the
15:00:10 23 defendant's addiction. He spoke those words. He's the one
15:00:13 24 who chose to release an audio book in this case about his
15:00:17 25 life and about his addiction and his troubles in the year

15:00:20 1 2018, the year he chose to buy a gun. That evidence is
15:00:24 2 important evidence because it shows you throughout that time
15:00:27 3 period, throughout 2018, including October that the
15:00:29 4 defendant was in fact using crack cocaine.

15:00:33 5 Mr. Lowell also said that the testimony of Naomi
15:00:41 6 Biden was cruel, those are his words, cruel. Who called the
15:00:46 7 defendant's daughter as a witness in this case? Not us.
15:00:50 8 The defendant called Naomi Biden as a witness in case. And
15:00:54 9 you saw up there on the stand how uncomfortable she was.
15:00:58 10 The anguish sitting there knowing she was testifying as a
15:01:02 11 defense witness, but she had to tell the truth. Right? You
15:01:07 12 know that she was up there completely uncomfortable, you
15:01:10 13 could see it. She couldn't vouch for the defendant's
15:01:14 14 sobriety throughout that month of October. She couldn't do
15:01:17 15 it on that witness stand.

15:01:19 16 So sometimes when you see a witness up there and
15:01:21 17 how they're acting, you can take your real life tools that
15:01:25 18 you use to evaluate credibility and assess what people are
15:01:31 19 saying and that means something, you know exactly what she
15:01:36 20 was saying when she was up there on that witness stand.
15:01:39 21 Mr. Lowell referenced this lockbox over and over again,
15:01:42 22 accused us of not putting it in to evidence, although we
15:01:46 23 brought it here to the courtroom for him to use. It's a
15:01:49 24 piece of plastic. I don't understand what the reference is
15:01:52 25 over and over.

15:01:53 1 The defendant walked into StarQuest Shooter,
15:01:55 2 walked out with a revolver, walked out with a speed loaded
15:02:01 3 that would rapidly reload that revolver, walked out with
15:02:05 4 hollow point ammo, the kind of ammo that widens when it
15:02:07 5 comes in to contact, ripping to shreds a diameter anything
15:02:11 6 it comes into contact with. He's talking about the plastic
15:02:14 7 case.

15:02:14 8 The evidence in this case, at the end, in
15:02:16 9 October, October 23rd, that gun isn't in that plastic case,
15:02:20 10 that gun is not in a lockbox that locked in your vehicle.
15:02:25 11 He's keeping it in a Raptor, his vehicle. You have seen the
15:02:28 12 evidence from his book and elsewhere that he's continuing to
15:02:31 13 meet drug dealers for his fix. He even told you in his book
15:02:36 14 that he would go to these drug deals, show up to them, he
15:02:41 15 had a gun pointed in his face on prior occasions. He told
15:02:44 16 you in his book he learned how to protect himself.

15:02:47 17 A plastic lockbox means nothing. The defendant
15:02:50 18 was a crack addict and a drug user and he had a gun, that's
15:02:54 19 a violation of the law.

15:02:56 20 Mr. Lowell said -- he accused us of not
15:03:02 21 presenting the knowing, knowingly element. I mean, I can't
15:03:06 22 tell you how many times Mr. Wise stood up here, how many
15:03:10 23 slides were addressed to the knowingly element. The
15:03:14 24 evidence clearly shows the defendant knew he was a drug
15:03:17 25 addict, we proved that beyond a reasonable doubt seven ways

15:03:21 1 to Sunday.

15:03:21 2 It may seem obvious, but someone who holds a
15:03:25 3 crack pipe to their mouth every fifteen minutes knows
15:03:29 4 they're a drug user and a drug addict. But he also said, he
15:03:33 5 said it in his book, and he said it in his text messages
15:03:36 6 over and over and over again.

15:03:38 7 Mr. Lowell, one thing I did agree with him using
15:03:43 8 was this accordion analogy, he used an analogy saying that
15:03:47 9 the government is playing this accordion and it's opening
15:03:51 10 and closing. That's consistent with the law, what
15:03:56 11 Mr. Lowell wants to do is he wants to make music from the
15:04:00 12 accordion by keeping it compressed, he doesn't want to
15:04:03 13 expand it, but that music doesn't play unless you open the
15:04:06 14 bag and fill it with air and close the bag and let the air
15:04:10 15 come out while you're playing the keys. That's exactly what
15:04:13 16 the law says in this case.

15:04:14 17 As Your Honor has instructed you with respect to
15:04:18 18 the definition of an unlawful user of a controlled
15:04:20 19 substance, use of a controlled substance is not limited to
15:04:22 20 use of drugs on a particular day. This is on page 18 of
15:04:26 21 your instructions. Or within a matter of days, or weeks,
15:04:30 22 before, but rather that the unlawful use has occurred
15:04:34 23 recently enough to indicate that the individual is actively
15:04:37 24 engaged in such conduct. An inference that a person was a
15:04:42 25 user of a controlled substance may be drawn from evidence of

15:04:45 1 a pattern of use or possession of a controlled substance
15:04:48 2 that reasonably covers a time period that the firearm was
15:04:52 3 possessed.

15:04:52 4 So what Mr. Lowell has sought to do in this case
15:04:55 5 is have you look with myopic focus on a narrow window of
15:05:00 6 time without looking at the big picture. That's not what
15:05:02 7 the law is. Her Honor has instructed you exactly as I just
15:05:08 8 read to you, pattern of use is probative of whether or not
15:05:11 9 he was using and whether or not he was an addict when he
15:05:14 10 checked that box on that form on October 12th, 2018.

15:05:19 11 Through that lens, the myopic focus like an
15:05:33 12 accordion that's not expanding that Mr. Lowell has applied
15:05:37 13 this case, he seeks you to view the text messages that you
15:05:41 14 saw where there are numerous messages in the month of
15:05:44 15 October, numerous messages in which the defendant is clearly
15:05:47 16 saying he's smoking crack, you saw the chart Mr. Wise put up
15:05:51 17 and the comparison from the summer of 2018, and how there
15:05:54 18 are actually more messages in October than we put up for
15:05:57 19 July of 2018 in this case.

15:06:01 20 Remember that the absence of a message on any
15:06:05 21 given day does not mean -- does not equate the defendant was
15:06:09 22 not a drug user or drug addict. Think about your real life
15:06:13 23 experiences, do you ever go to the grocery store and get
15:06:16 24 milk, do you ever have a spouse or family member or father,
15:06:21 25 a mother, a child who has asked you to go to the grocery

15:06:24 1 store to get milk, you do it routinely, I do the shopping in
15:06:29 2 my family for milk for my little son who downs it, sometimes
15:06:34 3 my wife will text me, sometimes she'll call me, sometimes I
15:06:37 4 know to go pick it up, I know if I look at my phone, I can
15:06:41 5 see one message on my phone to go get whole milk in the last
15:06:45 6 month, that doesn't mean I didn't go get whole milk every
15:06:49 7 other day, my son didn't starve. Think about the real life
15:06:49 8 experiences when you evaluate that evidence and you can
15:06:52 9 apply that in this case. The absence of a message on any
15:06:53 10 given day does not mean that the defendant suddenly was not
15:06:56 11 a drug user or a drug addict.

15:07:00 12 Similarly with the photographs that we saw on
15:07:04 13 the screen. Zoe Kestan has an incredible camera roll, her
15:07:07 14 camera roll documented over the course of months her
15:07:10 15 interactions with the defendant over and over and over
15:07:12 16 again, you saw drug use in some of those photos, but we also
15:07:16 17 saw photos where there wasn't evidence of drug use, and she
15:07:20 18 testified about that. If you look at her testimony it
15:07:22 19 matches with what the defendant said in his book when he was
15:07:24 20 on this month's long rolling party throughout the summer of
15:07:28 21 2018, she's along there, she's with him every step of the
15:07:31 22 way, right? The only photos that don't show crack that the
15:07:36 23 defendant has highlighted are those that are in September of
15:07:39 24 2018 when they're at Malibu, but again, just because you
15:07:43 25 don't have a photo of something doesn't mean it didn't

15:07:46 1 happen. Do you take photos of every meal you eat during the
15:07:50 2 day? Perhaps not. That doesn't mean you didn't eat
15:07:53 3 breakfast this morning, right? Zoe was photographing things
15:07:57 4 throughout her course of dealings with the defendant, but
15:07:58 5 the absence of one photograph on any given day does not mean
15:08:01 6 that her testimony was false.

15:08:03 7 We showed you some messages this morning where
15:08:09 8 the defendant was meeting individuals at the 7-Eleven
15:08:15 9 before, during, the gun purchase, and you also saw how he
15:08:20 10 described in his book meeting drug associates at 7-Eleven's.
15:08:25 11 Again, the story that Mr. Lowell told you was that he
15:08:29 12 suggested that he was there merely to get a cup of coffee,
15:08:32 13 but I don't know about you, when you get a cup of coffee, do
15:08:36 14 you have to text in that manner where you can't actually
15:08:39 15 describe to the individual that you're talking to what
15:08:41 16 you're getting, in cryptic code about meeting up at a
15:08:46 17 7-Eleven in the middle of the night.

15:08:48 18 Again, in that jury box, you can use your common
15:08:50 19 sense and the tools you have in real life to know that what
15:08:54 20 the defense is telling you is just a story, not supported by
15:08:57 21 the evidence.

15:08:58 22 Mr. Lowell attacked Mr. Cleveland as the whale
15:09:07 23 hunter in this case for selling the defendant a firearm. He
15:09:10 24 is a man who is a salesman at a gun store. On that day,
15:09:14 25 Mr. Biden decided to walk into that gun store. He knew what

15:09:17 1 he was getting into. You saw the front of that store, you
15:09:20 2 know exactly what was on that store. That was his choice,
15:09:23 3 nobody forced him to go in there. He could have gone to the
15:09:26 4 AT&T store and gone home, not gone to that gun store, like I
15:09:31 5 told you a moment ago, we wouldn't be here today, that was
15:09:34 6 his choice to walk in there, remember what Mr. Cleveland
15:09:39 7 told you. When Mr. Biden went in that store it was him, the
15:09:42 8 defendant, that said he wanted a revolver. The fact that
15:09:44 9 the Mr. Cleveland talked about the different types of
15:09:48 10 revolvers that were available is of no moment.

15:09:50 11 When Mr. Biden decided to misrepresent and lie
15:09:53 12 on that form, that's when the crime was completed, it
15:09:56 13 doesn't matter what type of gun he bought at that moment, he
15:09:59 14 was a drug user and a drug addict.

15:10:01 15 Now, one of the other stories that Mr. Lowell
15:10:05 16 has said is he's asked you to look at the form, past Section
15:10:12 17 A, Section A is the portion of the form that the defendant
15:10:14 18 filled out, and that's where the crime occurred, he's asked
15:10:18 19 you to look past that at the instructions at the very end of
15:10:22 20 the form and look and see whether or not drug user or addict
15:10:26 21 is defined in some manner.

15:10:30 22 Well, first of all, some things in life don't
15:10:33 23 need an explanation. Right? Some things are so obvious you
15:10:36 24 don't need to know what that means. Are you hungry? You
15:10:39 25 don't need a definition for that. Is your stomach rumbling?

15:10:43 1 Well, that means you're hungry. You don't need to go to the
15:10:47 2 novice section to figure out whether you're a drug user or
15:10:50 3 drug addict.

15:10:50 4 The other suggestion that the defense has made
15:10:52 5 is that Gordon Cleveland, the man who runs -- drives a trash
15:10:57 6 truck during the day and works at the StarQuest Shooters in
15:11:00 7 the evening to make some additional cash had to explain to
15:11:04 8 Yale educated defendant Hunter Biden what the words unlawful
15:11:09 9 user and crack addict meant. That's just a preposterous
15:11:13 10 notion. Those words are plain as day. The evidence shows
15:11:17 11 he knew what those words meant. He knew what those words
15:11:21 12 meant. You can see that reflected in his book as he writes
15:11:25 13 about his experience and knows at that time he was a drug
15:11:27 14 user and a drug addict.

15:11:29 15 Mr. Lowell has asked to you discuss just on one
15:11:37 16 piece of evidence here on the brown leather pouch, and has
15:11:40 17 built this out to suggest that where did the cocaine come
15:11:43 18 from, who done it, as if it's some mystery. Inside the
15:11:48 19 defendant's brown leather pouch was a white residue. That
15:11:52 20 brown leather pouch sat in an evidence vault for five years
15:11:56 21 and was tested by the FBI and confirmed to be cocaine.
15:11:59 22 There is no mystery about whose cocaine it was. There is no
15:12:03 23 mystery about whose brown leather pouch it was. You saw
15:12:07 24 text messages from Hallie Biden in which she discussed with
15:12:10 25 the defendant that he had brown leather pouches and he had

15:12:12 1 crack stems in them and they were near her children, and she
15:12:16 2 asked him to get rid of them. You saw that evidence in this
15:12:18 3 case. You heard her testimony that she put the revolver in
15:12:21 4 the brown leather pouch that was his that he used to store
15:12:24 5 drugs, and that she put it in the trash can in the bag. And
15:12:28 6 then you heard Mr. Banner talked about retrieving that brown
15:12:32 7 leather pouch from the trash can, inside of it was some
15:12:35 8 cocaine.

15:12:36 9 That cocaine that was tested by Dr. Brewer and
15:12:39 10 confirmed to be cocaine is evidence that the defendant was
15:12:42 11 using drugs during the time period he possessed the gun.
15:12:45 12 There is no evidence, no evidence, what Mr. Lowell says is
15:12:48 13 just a story, just like what I say is just argument, there
15:12:52 14 is no evidence that the brown leather pouch is anybody
15:12:55 15 else's in this case, period, and there is no evidence that
15:12:57 16 someone else put cocaine in the defendant's brown leather
15:13:01 17 pouch.

15:13:01 18 So Mr. Lowell talked about reasonable doubt
15:13:11 19 during his closing and he put up a slide, I would submit to
15:13:15 20 you that none of those things on that slide equate to
15:13:18 21 reasonable doubt.

15:13:18 22 I want to go through a couple of things that I
15:13:22 23 would submit to you, you would have to believe to find that
15:13:26 24 there was reasonable doubt in this case, and the evidence
15:13:28 25 just doesn't support that there is reasonable doubt.

15:13:31 1 The first thing you would have to believe is
15:13:33 2 that Zoe Kestan lied about seeing Hunter Biden use crack
15:13:38 3 every twenty minutes when she was with him. Now he said in
15:13:41 4 his book he used crack every fifteen minutes. She saw him
15:13:44 5 at The Freehand and at the Malibu house in September 2018,
15:13:48 6 and observed him smoking crack again and again several weeks
15:13:51 7 after his rehab.

15:13:57 8 Ms. Kestan's testimony about events just weeks
15:13:59 9 before the gun purchase is in and of itself enough to find
15:14:04 10 the defendant guilty in this case. It was not undermined in
15:14:10 11 any way, shape, or form merely because she didn't happen to
15:14:12 12 have a photo of him smoking crack during this same time
15:14:17 13 period.

15:14:17 14 Ask yourself why would the defendant if he was
15:14:20 15 truly in rehab, truly trying to turn the corner and stay
15:14:23 16 sober and be sober, why would he invite back Zoe Kestan,
15:14:28 17 someone who tolerated his crack use month after month after
15:14:31 18 month throughout 2018, why would he have her come out and
15:14:35 19 visit in Malibu, and why was he withdrawing hundreds and
15:14:39 20 hundreds and sometimes thousands of dollars a day in cash
15:14:42 21 and that -- speaking of cash for a moment, that narrative
15:14:45 22 completely fell apart from the defense in this case. What
15:14:48 23 they said in opening about stays, Airbnb stays, liquor
15:14:53 24 purchases, things of that nature, payments for treatment, we
15:14:56 25 showed you the bank statements in this case, all of that is

15:14:59 1 documented on the check card, as you would expect. There is
15:15:02 2 no evidence that any cash was ever used for any of those
15:15:05 3 purchases.

15:15:05 4 So what's the \$151,000 used for in this case?
15:15:09 5 You can see in the bank statement, all the purchases you
15:15:13 6 would expect someone to make are documented by the check
15:15:15 7 card as Agent Romig testified, and as you heard Agent Jensen
15:15:20 8 testify, those cash withdrawals are indicative of the
15:15:24 9 continual significant drug use that the defendant described
15:15:26 10 in his book.

15:15:28 11 The second thing you would have to believe in
15:15:31 12 addition to -- well, before I leave Zoe for a minute, the
15:15:35 13 defense has suggested that because she had an immunity
15:15:38 14 agreement that that somehow undermines her testimony. The
15:15:42 15 immunity that you heard her testify about requires her to
15:15:45 16 tell the truth. What's the one thing that could get her in
15:15:48 17 trouble here in this courtroom? If she lied. If she lied
15:15:52 18 and said something that wasn't true.

15:15:54 19 So I submit to you an immunity agreement is not
15:15:58 20 a license to lie, it's an agreement to tell the truth.
15:16:03 21 There is no evidence that Zoe Kestan felt like she should
15:16:07 22 lie in this courtroom and risk being prosecuted for those
15:16:10 23 lies, period. No evidence whatsoever in this case.

15:16:14 24 The second thing you would have to believe if
15:16:18 25 you felt like there was reasonable doubt was that Hunter

15:16:23 1 Biden lied to Hallie Biden in his text messages in October
15:16:26 2 of 2018. They want you to believe that the defendant is a
15:16:30 3 liar. He literally wrote to Hallie and sent incriminating
15:16:35 4 message after incriminating message. But as Mr. Wise said
15:16:39 5 in closing, why would you do that if you were trying to lie?
15:16:43 6 If you saw the relationship that the two of them had and
15:16:47 7 Hallie testified to that on the stand. Did the person
15:16:50 8 that's trying to help you and get you sober, why would you
15:16:53 9 tell that person that you were on a car smoking crack or at
15:16:56 10 a 7-Eleven, indeed we saw him at a 7-Eleven around that time
15:17:01 11 period, why would you do that if in fact you were lying,
15:17:04 12 just say you were off in D.C., say you were at the office,
15:17:07 13 say you're at the bar, say you were somewhere else, he
15:17:11 14 didn't say any of those things, he said he was smoking
15:17:13 15 crack. There is no evidence whatsoever that he was lying in
15:17:16 16 those messages. Indeed the defendant's own words were
15:17:19 17 there, "is my truth."

15:17:20 18 The third thing you would also have to believe
15:17:23 19 is that the defendant lied in his book, Beautiful Things,
15:17:27 20 lied throughout the book. You would have to believe that he
15:17:30 21 lied in the prologue when he described himself as a drug
15:17:33 22 addict. You have to believe he lied in Chapter 7, Cracked,
15:17:37 23 when the defendant discussed smoking crack around the clock
15:17:40 24 every day, still making his meetings sometimes, still
15:17:43 25 returning calls sometimes, but nonetheless describing

15:17:46 1 himself as an addict. You would have to believe that the
15:17:50 2 defendant described himself incorrectly when he said those
15:17:56 3 things. Again, there is no story that Mr. Lowell has given
15:18:00 4 in this case under mines this message. The defendant's
15:18:06 5 words were true in his book.

15:18:10 6 You would also have to believe that the
15:18:11 7 defendant lied at the end of Chapter 8 when he stated that
15:18:15 8 he stayed clean for only two weeks after the August stint to
15:18:18 9 a rehab center, meaning he was using again by mid September.
15:18:22 10 Zoe Kestan confirmed that. You also have to believe he was
15:18:26 11 lying in his book when he said he had relapsed, after
15:18:30 12 describing his heavy use of crack in that same chapter.

15:18:33 13 And speaking of stories, what the defendant said
15:18:36 14 in his book, if you'll recall, right before coming back to
15:18:40 15 Delaware, he says I told family back in Delaware I was
15:18:45 16 working on my sobriety, whatever the hell that meant at this
15:18:49 17 point. Here is what it meant, nothing, "I got good at
15:18:53 18 telling stories like that." Consistent with the defense in
15:18:57 19 this case.

15:19:02 20 So ask yourself when you look at the words in
15:19:05 21 that book, and you look at the end of the chapter that
15:19:08 22 begins California Odyssey, detailing the months leading up
15:19:12 23 to October 2018, and then you look at the beginning of the
15:19:15 24 next chapter that details his return to Delaware, you will
15:19:19 25 see the defendant say he had the hope of getting sober, not

15:19:24 1 staying sober, you see the defendant say he was in full
15:19:29 2 blown addiction, not alcohol only, anything like that, but
15:19:34 3 his words, believe his words in his book, because what those
15:19:37 4 words show is that he knew he had used crack cocaine, he had
15:19:42 5 relapsed, he was an addict, and an unlawful user.

15:19:47 6 The fourth thing you would have to believe is
15:19:52 7 that all that cash was withdrawn for some reason other than
15:19:55 8 drugs, \$151,000, that that was used for something other than
15:19:59 9 drugs. There is no evidence that it was used for anything
15:20:02 10 but drugs in this case, and at least a portion of that money
15:20:06 11 went to fund his drug purchases.

15:20:10 12 The fifth thing you would have to believe if you
15:20:13 13 found that the government had not met its burden was that
15:20:15 14 Naomi Biden lied when she said her father was unreachable
15:20:19 15 and was only reaching out to her in the middle of the night
15:20:22 16 after he was in New York City for several days. You would
15:20:24 17 have to find out he was blowing her off for some other
15:20:28 18 reason other than using drugs and partying all night, which
15:20:30 19 is what those messages show that we introduced this morning.
15:20:34 20 There is no evidence of any other reason, that's what he was
15:20:37 21 doing up there in New York, and you saw the anxiousness on
15:20:40 22 her face when she testified to that on the witness stand.

15:20:43 23 The sixth thing you would have to believe that
15:20:45 24 is that Hallie Biden was lying for some unexplained reason,
15:20:49 25 lying about finding drugs in the defendant's truck on the

15:20:52 1 day in question. She like Zoe, has immunity, again immunity
15:20:57 2 requires her to tell the truth. That's the one, lying is
15:21:00 3 the one thing that could risk her getting into trouble in
15:21:03 4 this case. If she had lied, she could be prosecuted for
15:21:07 5 lying.

15:21:07 6 I submit to you that given her prior personal
15:21:11 7 relationship with the defendant, if anything, she would have
15:21:14 8 had an incentive to shave the truth in his favor, not
15:21:19 9 testify against him. There is no evidence that contradicts
15:21:23 10 her testimony in this case. Again, the story that
15:21:26 11 Mr. Lowell has said is not evidence from that witness stand.

15:21:32 12 The seventh thing you'd have to believe is that
15:21:35 13 someone other than Hunter Biden put the cocaine in his brown
15:21:38 14 leather pouch. Who was it? Was it Mr. Banner? Was it some
15:21:42 15 other intermediary that we don't know, was it the police?
15:21:47 16 There is no evidence of any of that. It was the defendant's
15:21:50 17 brown leather pouch, and inside that leather pouch, it was
15:21:53 18 his cocaine as Hallie Biden testified, when she found the
15:21:56 19 items in his truck, she found drug remnants and drug
15:22:00 20 paraphernalia and consistent with that, in the very pouch
15:22:04 21 where he stored his drugs, there was cocaine residue.

15:22:07 22 So I submit to you to believe that the
15:22:11 23 government has not met its burden you would have to believe
15:22:14 24 all of those seven things. What a miraculous trial this
15:22:20 25 would have been if all those seven things were to have

15:22:22 1 occurred. Did everybody take that stand and lie? I submit
15:22:25 2 to you the evidence shows overwhelmingly they did not.
15:22:30 3 There is overwhelming evidence in this case of the
15:22:34 4 defendant's guilt beyond a reasonable doubt.

15:22:36 5 When Mr. Lowell was talking about the lock box
15:22:45 6 and the gun and keeping it safe, he sort of minimized the
15:22:55 7 defendant's possession of the gun during this time frame.
15:22:59 8 He had control of that firearm the entire time, even during
15:23:03 9 his brief couple of days up in New York, where ever that
15:23:07 10 firearm was, it was his, he never transferred ownership of
15:23:10 11 it, you didn't see any documentation of that, there is no
15:23:13 12 evidence he gave it to somebody else, even if it was at his
15:23:16 13 home in Delaware or some other location, he clearly came
15:23:19 14 back and got it, he had it in the trunk of his car on
15:23:22 15 October 23rd, 2018, that's possession, that meets the law
15:23:25 16 that Her Honor has instructed you, he exercised control over
15:23:30 17 it, he had control over that firearm at all given times and
15:23:34 18 therefore he possessed it.

15:23:35 19 In his book, the defendant said that the
15:23:41 20 desperation of crack can "most certainly induce violent
15:23:47 21 behavior." The law as we have and the laws that are at
15:23:52 22 issue in this case exist to prohibit crack users and crack
15:23:57 23 addicts and drug users from owning guns. We didn't make the
15:24:02 24 laws, congress makes the laws. We enforce the laws. You
15:24:07 25 decide whether the law is broken. It's plain and simple.

15:24:11 1 These same laws apply to the defendant just like they would
15:24:15 2 to anybody else.

15:24:17 3 You have heard overwhelming evidence in this
15:24:22 4 case, the defendant was a crack addict and an unlawful user
15:24:26 5 and illegally owned a gun. If this evidence did not
15:24:29 6 establish that Hunter Biden was a crack addict, and an
15:24:32 7 unlawful user, then no one is a crack addict or an unlawful
15:24:37 8 user.

15:24:37 9 We ask that you return the only verdict during
15:24:41 10 your deliberations, the only verdict that is supported by
15:24:44 11 the evidence in this case, all three counts, there is
15:24:48 12 overwhelming evidence of the defendant's guilt, and in the
15:24:51 13 end of this case, we ask that you find that the law applies
15:24:56 14 equally to this defendant just like it would to anybody else
15:24:59 15 because when he had a choice to make on October 12th, 2018,
15:25:03 16 he chose to lie and buy a gun, he violated the law. So
15:25:07 17 we'll ask that you return the only verdict that is supported
15:25:10 18 by the evidence and that is a verdict of guilty on all three
15:25:13 19 counts.

15:25:14 20 THE COURT: All right. Thank you. Members of
15:25:17 21 the jury, I'm just going to pick up at the end of the
15:25:20 22 instructions and then let you get to your deliberations.

15:25:23 23 Let me explain some things about your
15:25:26 24 deliberations and your possible verdicts.

15:25:28 25 First, by custom of this Court, Juror Number 1

15:25:32 1 is the jury foreperson. Congratulations, you won the
15:25:37 2 lottery. This person will speak for the jury here in court.
15:25:39 3 She will also preside over your discussions. However, the
15:25:42 4 views and the votes of the foreperson are entitled to no
15:25:45 5 greater weight than those of any other juror.

15:25:47 6 Second, I want to remind you that your verdict
15:25:50 7 whether it is guilty or not guilty must be unanimous. To
15:25:53 8 find the defendant guilty of an offense, every one of you
15:25:57 9 must agree that the government has overcome the presumption
15:25:57 10 of innocence with evidence that proves each element of that
15:26:03 11 offense beyond a reasonable doubt. To find the defendant
15:26:04 12 not guilty, every one of you must agree that the government
15:26:07 13 has failed to convince you beyond a reasonable doubt.

15:26:10 14 Third, if you decide that the government has
15:26:13 15 proved the defendant guilty beyond a reasonable doubt, then
15:26:16 16 it will be my responsibility to decide what the appropriate
15:26:19 17 punishment should be. You should never consider the
15:26:23 18 possible punishment in reaching your verdict.

15:26:25 19 Fourth, as I have said before, your verdict must
15:26:30 20 be based only on the evidence received in the case and the
15:26:32 21 law I have given you. You should not take anything I may
15:26:36 22 have said or done during this trial as indicating that I
15:26:38 23 think -- what I think of the evidence or what I think your
15:26:41 24 verdict should be. What the verdict should be is the
15:26:44 25 exclusive responsibility of the jury.

15:26:47 1 **Fifth, now that all the evidence is in, the**
15:26:49 2 **arguments are complete, and once I finished these**
15:26:51 3 **instructions, you are free to talk about the case in the**
15:26:53 4 **jury room. In fact, it is your duty to do so and to talk**
15:26:57 5 **with each about the evidence, and to make every reasonable**
15:26:59 6 **effort you can to reach unanimous agreement. Talk with each**
15:27:03 7 **other, listen carefully and respectfully to each other's**
15:27:06 8 **views and keep an open mind as you listen to what your**
15:27:09 9 **fellow jurors have to say. Do not hesitate to change your**
15:27:12 10 **mind if you are convinced that other jurors are right and**
15:27:14 11 **that your original position was wrong, but do not ever**
15:27:17 12 **change your mind because other jurors see things**
15:27:20 13 **differently, or just to get the case over with. In the end,**
15:27:23 14 **your vote must be that, your own vote, it is important for**
15:27:26 15 **you to reach unanimous agreement, but only if you can do so**
15:27:30 16 **honestly and in good conscious, listen carefully to what the**
15:27:34 17 **other jurors have to say and then decide for yourself if the**
15:27:34 18 **government has proved the defendant guilty beyond a**
15:27:34 19 **reasonable doubt.**

15:27:36 20 **No one will be allowed to hear your discussions**
15:36:10 21 **in the jury room, and no record will be made of what you**
15:36:10 22 **say, so you should all feel free to speak your minds.**

15:36:10 23 **Remember that if you elected to take notes**
15:36:10 24 **during the trial, your notes should be only be used as**
15:36:10 25 **memory aids. You should not give your notes greater weight**

15:36:10 1 than your independent recollection of the evidence. You
15:36:10 2 should rely upon your own independent recollection of the
15:36:10 3 evidence or lack of evidence and you should not be unduly
15:36:10 4 influenced by the notes of other jurors, do not give any
15:36:10 5 more or less weight to the views of a fellow juror just
15:36:10 6 because a juror did or did not take notes. Do not assume
15:36:10 7 that just because something is in someone's notes that it
15:36:10 8 necessarily occurred in court. It is just as easy to write
15:36:10 9 down something incorrectly as it is to hear or remember it
15:36:10 10 incorrectly. Notes are not entitled to any more weight than
15:36:10 11 the memory and impression of each juror.

15:36:11 12 Sixth. Once you start deliberating, do not
15:36:11 13 talk, communicate with, or provide any other information
15:36:11 14 about this case by any means to the court officials, or to
15:36:11 15 me, or to anyone else except each other. During your
15:36:11 16 deliberations, you may not use any electronic device or
15:36:11 17 media, such as a telephone, cell phone, smart phone, iPhone,
15:36:11 18 Blackberry or computer; the internet, any internet service,
15:36:11 19 or any text or instant messaging service; or any internet
15:36:11 20 chat room, blog, or website such as Facebook, MySpace,
15:36:11 21 LinkedIn, YouTube, Twitter or X, TikTok, Instagram,
15:36:11 22 What'sApp or SnapChat, or anything else you can think of to
15:36:11 23 communicate to anyone any information about this case or to
15:36:11 24 conduct any research about this case.

15:36:11 25 Seventh. If you have any questions or messages,

15:36:11 1 your foreperson should write them down on a piece of paper,
15:36:11 2 sign the piece of paper, and give the piece of paper to the
15:36:11 3 court official who will then give them to me. I will first
15:36:11 4 talk with the lawyers about what you have asked and will
15:36:11 5 respond as soon as I can. In the meantime, if possible,
15:36:11 6 continue with your deliberations on another subject.

15:36:11 7 You will have exhibits with you in the jury
15:36:11 8 room. To the extent there are other exhibits, like physical
15:36:11 9 exhibits that were admitted into evidence that you don't
15:36:11 10 have, you may send a message to me and if I can legally do
15:36:11 11 so, I will have the exhibits provided to you.

15:36:11 12 One more thing about messages. Do not ever
15:36:11 13 write down or tell anyone how you or anyone else voted.
15:36:11 14 That should stay secret until you have finished your
15:36:11 15 deliberation. If you have occasions to communicate with me,
15:36:11 16 the Court, while you are deliberating, do not disclose the
15:36:11 17 number of jurors who have voted to convict or acquit on any
15:36:11 18 offense.

15:36:11 19 Let me end this section with what I said in the
15:36:11 20 preliminary instructions. Perform your duties fairly and
15:36:11 21 impartially. Do not allow sympathy, prejudice, political,
15:36:11 22 or other beliefs, public opinion, or any other factor other
15:36:11 23 than the law and the evidence influence your decision.

15:36:11 24 A verdict form has been prepared for you that
15:36:11 25 you should use to record your verdict. There are three

15:36:11 1 questions on the verdict form, one for each of the counts.
15:36:11 2 Take the form with you into the jury room. When you have
15:36:11 3 reached unanimous verdicts, the foreperson should write the
15:36:11 4 verdicts on the form, date it, and sign it. I think there
15:36:12 5 is a space for each of you to sign the form, and then return
15:36:12 6 -- then you can let us know that you have a verdict. At
15:36:12 7 that point you'll return to the courtroom where you will
15:36:12 8 read the verdict out loud.

15:36:12 9 If you decide that the government has proved the
15:36:12 10 defendant guilty of any or all of the offenses charged
15:36:12 11 beyond a reasonable doubt, you will say so by having your
15:36:12 12 foreperson mark the appropriate place on the form guilty.
15:36:12 13 If you decide the government has not proved the defendant
15:36:12 14 guilty of some or all of the offenses charged beyond a
15:36:12 15 reasonable doubt, you say so by marking the form in the
15:36:12 16 appropriate place, not guilty.

15:36:12 17 And I will just remind you when you're looking
15:36:12 18 at the jury verdict form for each of the counts that is on
15:36:12 19 there, you should look back to the instructions relating to
15:36:12 20 those counts in order to see what the law is.

15:36:12 21 Let me finish up by saying something I have said
15:36:12 22 to you before at the beginning of the case. I think I said
15:36:12 23 it to you just two minutes ago. Nothing that I have said or
15:36:12 24 done during this trial was meant to influence your decision
15:36:12 25 in any way. You have to decide this case for yourselves

15:36:12 1 based on the evidence presented and the law I have given
15:36:12 2 you.

15:36:12 3 So that is the end of the instructions. We're
15:36:12 4 going to bring the jury officer forward. But before I do
15:36:12 5 that, let me just say, jurors, number 13, 14, and 15, you
15:36:12 6 are alternate jurors. You are here in case during the
15:36:12 7 deliberations any of jurors numbers 1 through 12 are unable
15:36:12 8 to continue. So you are not going to deliberate at this
15:36:12 9 point. Instead, Mr. Buckson or Ms. Smith will take you into
15:36:12 10 a different place in the courthouse where you can wait for a
15:36:12 11 while. I don't want to send you home because then we waste
15:36:12 12 time if it turns out that we need you to come back. So
15:36:12 13 we'll find you a more comfortable room where you can stay.

15:36:12 14 Mr. Buckson will collect your notes and put them
15:36:12 15 in a sealed envelope to the extent that you are called upon
15:36:12 16 and need them, you will then get them back. And the other
15:36:12 17 twelve jurors at this point will go back and begin their
15:36:12 18 deliberations. So let's have the Jury Officer come forward.

15:36:12 19 COURTROOM DEPUTY: Please raise your right hand.
15:36:12 20 Do you solemnly swear that you will keep this jury in some
15:36:12 21 quiet and convenient place, that you will not suffer anyone
15:36:12 22 to speak to them nor speak to them yourself touching the
15:36:13 23 issue before them unless it be to ask them if they have
15:36:13 24 agreed upon their verdict.

15:36:13 25 JURY OFFICER: I do.

15:36:13 1 THE COURT: All right. You have may go back to
15:36:13 2 the jury room.

15:36:13 3 COURTROOM DEPUTY: All rise.

15:36:13 4 (Jury exiting the courtroom at 3:33 p.m.)

15:36:13 5 THE COURT: All right. Anything we need to
15:36:13 6 address?

15:36:13 7 MR. HINES: I don't think so, Judge.

15:36:13 8 MR. LOWELL: I don't see that there was a
15:36:13 9 sentence, I don't think there was for those alternates,
15:36:13 10 they're not supposed to be deliberating among the three of
15:36:13 11 them. I don't think it matters, but I forgot once you said
15:36:13 12 it.

15:36:13 13 THE COURT: If you want, I can instruct them of
15:36:13 14 that.

15:36:13 15 MR. LOWELL: What's your normal practice?

15:36:13 16 THE COURT: I don't -- I haven't ever done that
15:36:13 17 before because I always assume that they don't talk to
15:36:13 18 anyone still applies to them.

15:36:13 19 MR. LOWELL: You can do that, I just wanted to
15:36:13 20 raise that.

15:36:13 21 THE COURT: All right. And then how do you want
15:36:13 22 handle, what I usually do with the jurors is I tell them if
15:36:13 23 you want to leave at 4:30, you can tell us, if you think you
15:36:13 24 want to keep deliberating, you can tell us. But usually I
15:36:13 25 just let them leave. Do you want me to do anything

15:36:13 1 different and say remember you can't talk to anybody? What
15:36:13 2 is it that you want to do?

15:36:13 3 MR. HINES: Nothing different. We think that
15:36:13 4 the Court's ordinary practice is fine.

15:36:13 5 THE COURT: Okay. And then in the morning when
15:36:13 6 they come in, is that you want me to follow that same
15:36:13 7 practice. Normally I would just let them -- when they get
15:36:13 8 here and they are deliberating, as soon as all of the jurors
15:36:13 9 are there to deliberate, I let them begin deliberating
15:36:13 10 without bringing them back into the courtroom or anything.

15:36:13 11 MR. HINES: That's fine with us.

15:36:13 12 MR. LOWELL: It would be overkill I think at
15:36:13 13 this point after how many times you have given them that
15:36:13 14 instruction, so we have to assume they'll follow your
15:36:13 15 instruction.

15:36:13 16 THE COURT: Thank you. We'll let you know if we
15:36:13 17 get any questions or anything. Usually you can just hang
15:36:13 18 out for a little while in case something quickly comes up.

15:36:13 19 MR. LOWELL: Okay.

15:36:13 20 COURTROOM DEPUTY: Court is adjourned.

15:36:13 21 (Court adjourned at 3:36 p.m.)

22 I hereby certify the foregoing is a true and
23 accurate transcript from my stenographic notes in the proceeding.

24 /s/ Dale C. Hawkins
25 Official Court Reporter
U.S. District Court